Supreme Court, U.S.
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

ELAINE KARAS,
Petitioner

v.

SPENCER B ROBBINS et al,
Respondents

*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

*

PETITION FOR WRIT OF CERTIORARI

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June 25, 2010

QUESTIONS PRESENTED

1. Does a district court have discretion to import into his Opinion (virtually word for word) the entire "Statement of Facts" set forth in a defense counsel's dismissal brief, represent that plagiarized content as being facts of the complaint, and then dismiss the complaint with prejudice pursuant to FRCP 12(b)(6)? Third Circuit says, "Yes."

2. *Liteky* states that "judicial rulings alone almost never constitute a valid basis for a bias or partiality recusal motion... and require recusal only when they evidence such deep-seated favoritism or antagonism as would make fair judgment impossible." Does the judicial decision described above in (1) qualify under *Liteky* for recusal pursuant to §455(a) or §455(b)(1)? How about when it is combined with acts of due process deprivation by the judge? Third Circuit says that these do not show bias and cites *Liteky* as its authority.

3. Does a plaintiff have a constitutional right to transparency regarding secret ex parte communications that are transpiring in the case on an ongoing basis between defense counsel and the judge? Or is secreting the nature and content of these contacts a matter for judicial discretion? Third Circuit buries this issue.

4. If a court closes a case subsequent to and in explicit reaction to learning of Mandamus filing, does a Petitioner lose her right to mandamus remedy? Third Circuit says: Yes, the issue is now moot (regardless of the bad faith act by judge) and Petitioner can Appeal. But if a court has based his dismissal on fiction and divested the party of her due process rights throughout the suit to prevent proper record from being developed for Appeal, then on what basis is an Appeal even meaningful? Where is the guardian of my civil rights?

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OPINIONS BELOW

All district and Circuit court Opinions are unreported.

JURISDICTION

The judgment of the Third Circuit was entered on 03/30/10. The jurisdiction of this Court is invoked under 28 USC 1254(1)

STATUTES AND PROVISIONS INVOLVED

28 U.S.C. 351
28 U.S.C. 455(a); 28 U.S.C. 455(b)(1)
42 U.S.C. 1983
U.S. Constitution: Article 1, Section 3, Clause 7; Article 6, Clause 2; Fourteenth Amendment

STATEMENT OF THE CASE

> "The case at bar involves a scandal bigger and more profound than Watergate (see *First Amended*, P19, L356ff). It shocks the conscience, desecrates the integrity of our legal system, and constitutes a fraud upon our Supreme Court." (from Appendix, p82a)

The elements of my 42 USC 1983 complaint concern my discovery that state court judges are running racketeering-type operations out of the Monmouth and Ocean County Superior Court vicinages in conjunction with corrupt attorneys. I was a victim of one of their scam operations. They used criminal methods that included thwarting the case assignment wheel; creating false evidence, fraudulent affidavits, and attorney Certifications with forged signatures (to protect their license should they get caught); and thwarting the automated case management system that the Supreme Court of NJ puts statewide to protect a party's civil rights under Court Rule. They also used loan shark tactics to intimidate their victim into acquiescence. All of the wires under the hood of my car and its computer were sabotaged in dark of night thereby totaling the vehicle. Through these criminal means, Bribers (the Pietersens) secured a bogus $36K judgment against me that has destroyed my credit, caused increase insurance rates, and prevented me from qualifying for loans or refinancing my mortgage. It is to date still collecting 12 % interest. They also used this criminal mechanism to relieve themselves of approximately $75K in malicious damages and unpaid rent pursuant to a lease contract.

Respondent Gilroy was using his position as PJSC in partnership scams with Respondent Robbins and was exploiting the people's machinery of justice as

both sword to garner bribes and a shield from accountability. They divest their victim of constitutional rights in order to deliver predetermined case outcome to the plaintiffs of that state case who had advanced consideration to Gilroy for that goal. The specific acts and actors are described in my Mandamus Petition. Appx VI; see pp 20a-29a. The Third Circuit panel was also provided, in Mandamus Appendix with my Amended complaint, that went into even greater factual detail about the criminal operations, the targeting of innocents, and the criminal scams perpetrated on the people's machinery of justice to exploit innocents of property by divesting their civil rights.

Those well-substantiated, clear, and compelling facts presented in my Amended were converted by federal judge (Chesler) to a wholly disparate account that he then used to dismiss my complaint with prejudice pursuant to FRCP 12(b)(6). That false account was plagiarized from defense counsel's brief and was punctuated with fiction of his own creation.

During the course of my §1983 suit, Chesler prohibited me from access to CM/ECF E-mail notices of filings, engaged in ongoing merits-related ex parte communication with all three defense counsel, and allowed conduct that defiled the Rules of Civil Procedure. All of this was presented to Third Circuit in exquisite detail. An example is counsel's tactic to self-issue 60-Day Waivers, in dilatory tactic, after her clients had been served by process server. She then availed herself to a 15-Day clerk extension that was grounded in fraud. She then took a further 7-Day extension, awarded by clerk, at ex parte verbal directive from judge. This is discussed in Appx VI.

Chesler supported the various bad faith scams perpetrated by all three defense counsel. They were all calculated to divest me of due process rights. These

scams included things like falsifying motion calendar dates to defeat my response[1] or delaying the serving of motions documents and with missing pages or exhibits. Chesler confiscated many of my documents and thwarted their entry into docket. This included all of my authenticated and filed Summonses. He used clerks regularly as a long arm to assist his personal agenda, allowed repeated instances of fraud upon a court, and simply disregarded my repeated demands for documents that had been filed ex parte by counsel and for enforcement of my due process rights. All of this is, of course, "judicial" conduct. But there is no objective observer in this country, other than Third Circuit's Barry, Fisher, and Stapleton who would fail to apply §455(a) -- especially under *Liljeberg* and a plain reading of Congress' intentions.

Of particular interest is Docket Item #27, an ex parte 04/29/09 letter to Chesler from Robbins. Petitioner was forced to visit a district court in a different city in order to obtain a copy of that document. I had filed a 04/24/09 Motion for Sanctions against Robbins for *inter alia* perjury in attorney affidavit, impersonating another attorney, violating the electronic signature mandates, perpetrating acts of fraud upon a court, falsifying law and fact, and filing a wholly frivolous and incoherent unsigned dismissal motion -- which, by the way, was granted in an incoherent manner by Chesler. He dismissed Robbins simultaneously with prejudice and with opportunity to amend complaint. Such judicial tactic show calculated bad faith.

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[1] The most bizarre of these was counsel's Notice of Motion which explicitly represented to Adversary that the setting of that dismissal motion to calendar would be set by the judge. That did not occur. Chesler granted that dismissal motion in absence of protocol or notice of intent to set it to calendar. I was thus divested of my due process right to issue Opposition.

The 04/29/09 Robbins letter requests permission to delay filing a response to my motion for sanctions against him in light of the fact that my request for sanctions will be moot after the court rules on his motion to dismiss my Amended. That comment has only one reasonable interpretation. It confirms that Chesler agreed to provide specific case outcome to Robbins for bribe. Of even greater interest is the fact that this document displays two fax lines. Docket #27 is discussed at Appx VI, pp 35a-39a.

All of these prejudicial (albeit "judicial") acts (and others) are described in detail in Appx VI, pp 29a-41a. Third Circuit denied that they are sufficient for §455 recusal and cited *Liteky* as their controlling authority. This determination simpliciter entails that *Liteky* is in need of clarification and greater specificity. Such conceptual blunder could not have been reasonably set forth on *Liljeberg*.

Each allegation presented to the Third Circuit in my Mandamus Petition was supported by extensive documentary evidence in its extensive Appendix. Yet the panel characterizes my Mandamus Petition (see their Opinion, Appx IV, at 11a) as either my criticizing acts that were within Chesler's discretion (the plagiarizing in FRCP 12(b)(6)) or as proffering allegations that are unsupported by facts. This is intentional falsification of fact by Circuit judges secondary to their own impermissible motive. When Court of Appeals judges issue such commentary in face of the document at issue, then it is time for the Supreme Court to assist them into retirement. The public is not this easily amused.

If district and Circuit judges are allowed to fabricate fiction out of whole cloth and then fraudulently represent it as "fact" in a FRCP 12(b)(6) context and in a §455 context for goal to justify case

outcome through fraud, then this conduct needs sanction from Supreme Court. For it goes to the integrity of the judicial system in this country. Our courts are a fraud because Court Rules mean nothing, law means nothing, Supreme Court decisions mean nothing, facts of the complaint mean nothing, and Oath means nothing. Judges convert your claims willy nilly into any fiction of their choosing if there is either a bribe or nepotism at stake. Petitioner asks the Supreme Court: What remedy does a victim of judicial malfeasance have when nepotism is the unwritten law of the land for all district and Circuit courts (except, of course, in Kozinski's court). And why does this Court not see what they took away from the people when the majority allowed *Liteky* to weaken (if not to void) §455(a) and *Liljeberg*?

The evidence in my state case is compelling and abundant. This is precisely the kind of situation for which §1983 was enacted. One would think that a federal judge in 2010 after having read *Mitchum* would be outraged at such criminal conduct by his state counterparts. Not so. The evidence of my §1983 case indicates that shortly after my case was filed in Newark, Chesler contacted a judiciary defendant and reached agreement that he would deliver to them a case outcome in their favor. Due to a corrupt judge having been assigned to my case (Chesler), my right to file my motion, pursuant to §1738 as authorized by *Exxon*, to collaterally attack the constitutionally infirm state court judgment (obtained in total absence of jurisdiction, Summons, and due process), was taken from me by an individual who is salaried to protect my constitutional rights. NJ would not allow full faith and credit to that judgment were it from a sister state.

The evidence in my district court case is also compelling and abundant. This is precisely the kind of situation for which §455(a)(b)(1) was enacted. One

would think that the Third Circuit would have no tolerance for corrupt judges in their districts. Not so. The case evidence indicates that when my Petition for MandamusWrit was filed, the motions attorney (Helen) saw my Petition as potentially incendiary and brought it to CJ Scirica. He, in turn, immediately contacted Chesler, instructing him to decide my last pending motion (but not my numerous pending applications) and to CLOSE THE CASE. This disreputable Circuit tactic enabled the panel to allege that my Mandamus Petition is moot. My Petition (Appx VI, 15a) was filed around 1:00 PM on 01/21/10. Chesler decided my pending motion (Appx VIII, 66a) prior to 11:00 AM on 01/22/10 and closed the case (Appx III, 9a). After receiving a copy of that order, I issued a Mandamus Petition Supplement (Appx VII at 49a).

REASONS FOR GRANTING THE WRIT

There are two main reasons for granting certiorari. The first is to demonstrate to the people of this country the Supreme Court's view on the conduct described herein and in the papers of the Appendix. Are our courts a fraud? Will the Supreme Court be proactive on its supervisory duties and take steps to correct what lower courts have done or will the Court be silent and be a part of the black wall of cover up? When there is a conflict between common law and the US Constitution, on which side of the fence will the feet of the Supreme Court stand? This is the key issue.

The second reason to grant Writ is to take the steps to correct the problems in the people's legal system that have led to the problems described herein and in Appendix documents. With this hope in mind, I clarify four problems that have led to this Petition and offer questions for the Court to consider.

Problem #1. 42 USC 1983 was enacted in 1871 for the purpose to interpose the federal courts between the states and the people as guardians of the people's civil rights. The intent was to provide a statutory remedy for the problem that state courts were being used by malefactors in league with judges to injure innocents through the tactic of abrogating their civil rights in courts of law. (*Mitchum*) The facts of the within case prove that we have not come very far in the almost 150 years since the Civil Rights statute was enacted. Instead of federal judges being the protectors of the people (as intended by Senator Lowe) they have become exploiters -- just like their state counterparts in 1871. District judges choose allegiance to their state judge counterparts over duty to law and Statute and Circuit judges ratify the same. Nepotism trumps Oath and law. Constitutional rights are meaningless before federal judge, and on Circuit review, in a civil rights action -- even where it is plain that judges have committed felony through calculated perversion of the people's machinery of justice. §1983 is a legal nullity.

What more is needed? Is the Supreme Court to serve mandamus Writ upon district and circuit courts and order them to obey law in cases where fellow judges are defendants? Wasn't *this* the point of their Oath? Why, then, would Writ be other than a fleeting fix (if at all)? What mechanism does the Supreme Court intend to implement to protect the people's machinery of justice, the people's civil rights, and the people themselves from being exploited as prey secondary to bribe? How will you force judges to place Oath and law over their nepotism and bribe? How will you make them accountable under law? And is the ruling in *Kay v Ehrler* too narrow? Attorneys will not represent a citizen where criminal conduct of judges is at issue.

Problem #2. *Liteky* is short on a workable rule of law for §455(a) recusal.

(a) Does the holding in *Liteky* commit the conceptual error of conflating: (i) the having of a biased attitude with (ii) the expressing of a biased attitude? Can a judge be cold and calculating in his §455 bias "against the Germans"(*Berger*)? Could he be replete with bona fide "deep-seated extrajudicial source factor" but simply not be putting any affect on display in his judicial activities? Isn't a truly biased judge (Chesler) more likely to contain his bias so he can enjoy its fruits?

(b) If the point of §455(a) recusal is that the prohibited bias, if left unchecked, will result in rulings and Opinions that display a dearth of fair judgment, then why are not decisions simpliciter evidentiary of impermissible bias (even in absence of accompanying display of prejudicial affect)? If impermissible extrajudicial source factor bias is at work in a lawsuit, then it *must* manifest in the judicial. For *that* is its natural object of expression. Anything else is incoherent.

(c) It is suggested in *Liteky* that judicial decisions are not to be evaluated in a §455 context because decisions are the proper focus of Appeal, not §455 recusal. But this view overlooks the point that (unrecoverable) rights are being lost en route to Appeal and the record is not being properly prepared for Appeal due to the effects of the extrajudicial bias (with contained affect). There is a "machine gun repetition of denial of constitutional rights" (*Chapman*): The victim's motions hang in abeyance, her applications are thwarted from docket entry, her Opposition arguments are ignored, counsel are allowed to commit fraud upon a court repeatedly and to engage in bad faith scams, and the entire facts section of counsel's FRCP 12(b)(6) dismissal brief is plagiarized by judge and set forth in Opinion as the purported averments of

her complaint that warrant dismissal with prejudice. The view of Third Circuit: All was within his discretion. The view of *Liteky*: All that stuff is judicial. There is no temper tantrum going on. The view of *Berger*: "The remedy by Appeal is inadequate... If prejudice exists, it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions..."-- which, by assumption, are absent or perverted due to extrajudicial source factor bias at work.

Problem #3. Issue of First Impression: The legal concept of "fraud upon a court" concerns an attorney committing perjury in sworn affidavit or his falsifying facts, law, or evidence with goal to secure relief from a judge that is not warranted via deceiving that judge. Such acts are to be severely sanctioned (*Hazel*) when brought to his attention. What if the judge, instead, allows the acts and the same is affirmed by Circuit? Do acts of fraud upon a court by counsel count as such in cases where the judge was not deceived by the said acts because he was an accomplis of counsel? How is such situation to be understood and treated?

Problem #4. (a) The overall purpose of 28 USC 351 is "not to punish but to protect the judicial system and the public from further acts by a judicial officer that are detrimental to the fair administration of justice." Yet a judge can (repeatedly) pervert the people's machinery of justice for licentious or monetary gain, costing parties six-figures in losses, and the most that will happen to him is that he will have this exposed to his colleagues in Judicial Council. The most that they, in turn, will do is make him utter the token, "sorry." And he doesn't even have to do that. He can thumb his nose at their attempts at due process and refuse to participate in their inquiry. His colleagues will still

allow him to emerge from the "investigation" unscathed. There is no limit to the number of times that this sordid dance can be repeated. (Manuel Real, 9th Cir.)

(b) Article 6, Clause 2 mandates that judges shall be bound by the supreme law of the land (presumably both in their own conduct and in their decision-making). Article 1, Section 3, Clause 7 mandates that impeachable offenses, like delivering case outcome in exchange for bribe, shall be accountable under law. But §351 makes judges accountable only to ABA colleagues and ABA colleagues protect ABA brethren as is definitively shown in the within case. Since nepotism rules, judges are not accountable under law, contrary to our Constitution. Hence, many use their Bench as the vehicle for committing impeachable crimes and get away with it -- as is also proven by the within case: For Circuit judges watch out for district judges and they watch out for state judges.

Does §351 violate Article 1, Section 3, Clause 7 or Article 6, Clause 2?

What right does the Third Circuit have to sit in Judicial Council on *any* judge, given their conduct in this case? Isn't it a little like the pot calling the kettle black? Barry, Fisher, Stapleton, Chesler, and Real are equally corrupt.

Is immunity being wrongly applied to *all* judicial decision-making when the framers of our Constitution clearly did not want to protect judicial decisions that result from bribe?

The facts of the within case prove that Justice Frankfurter's temple of justice (*Universal Oil*) has degenerated into a judicial farmer's market where case outcome is purchased and delivered on a daily basis under the camouflage of judicial sophistry. Federal judges are committing impeachable offenses, perverting the people's machinery of justice, and divesting

constitutional rights in federal court in civil rights actions (and are being affirmed in Circuits) in order to garner bribes or to protect felony committed by state judges (who have committed the identical offenses). The acts of felony by lawyers complicit in the bribery (and, in particular, those who part time Municipal judges themselves, like Spencer Robbins) get a free ride on the train of judicial nepotism because *their* acts are inextricably interwoven with the acts of judicial felony. As a result, the attorney's client(s), who proffered the bribe in the first place to purge a debt and secure illicit windfall, get away with having committed The Perfect Crime. And this is all because judges, as a group, have come to believe that *ceteris paribus* (i.e., no blood, no DNA) they are unaccountable under law. Everything falls under the rubric of an ill-conceived notion of immunity that has transformed the framer's commodity (of judicial independence for goal to protect acts that enforce law) into the new commodity of independent contractors whose retail goods are predetermined case outcomes. Who, then, is the protector of the people's civil rights? And what recourse do the people of this country have to protect proactively their own constitutional right to an impartial judge in light of *Liteky*? This decision appears to nullify the explicit intent of Congress in passing §455(a) and renders the standard for recusal entirely vague (what and how much counts as extrajudicial source factor) or insipid (there must be profuse displays of negative affect in face of the reality that judges are far more likely to contain such negative affect) or unrealistic (how does one meet their burden to prove extrajudicial source factor at work in light of the fact that no judge is going to allow one to review his extrajudicial phone and fax records)? Justice Stevens had it right in *Liljeberg*.

What are the implications here for the accuracy of the 2006 Breyer Report? Why should the public believe that the judicial error rate is *c.*2% when judicial sophistry tactics calculated to camouflage the delivering of purchased case outcome were not even envisioned, let alone evaluated, as part of that review?

The problems described herein are not an isolated incident or limited to NJ. Judicial misuse of office for bribe occurs *every* day in *every* state at *every* level of court. I can tell you of *many* other cases. In fact, I will be bringing another case for certiorari later this year. In that case, my brother (in a different state) created a Will in my father's name and bribed a surrogate to pervert the machinery of justice to deliver case outcome in his favor. Despite the fact that the Will was unsigned, unnotarized, unwitnessed, Probate was awarded. Despite the fact that dismissal motion was converted in absence of Notice and the record shows judicial obstruction to evidence and attorney perjury, the decision was affirmed by the CJ of the Appellate Division. Despite the fact that I was able to prove that I have a meritorious §1983 case and that my brother has been withholding my mother's Will from Probate for four years now, federal judge used sophistry tactics to dismiss my complaint to protect judiciary colleagues. The brother got a free ride. ***This*** is the result of an ill-conceived notion of judicial immunity and 28 USC 351. 42 USC 1983 is a legal nullity.

CONCLUSION

The petition for a writ of certiorari *must* be granted.

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APPENDIX

I. Opinion (455) Chesler USDJ (12/17/09) . . . 1a

II. Order Denying §455 Motion (12/17/09) . . . 8a

III. Opinion: Chesler USDJ (01/22/10) 9a

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I. Opinion (455) Chesler USDJ (12/17/09)

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Elaine Karas, Plaintiff — Hon. Stanley R. Chesler, USDJ
Civ A, No. 08-5264

v

Spencer B Robbins Esq, et. al, Defendants — OPINION

Chesler, U.S.D.J.

This matter comes before the court on the application of Plaintiff Elaine Karas to recuse the court (docket item #65). Defendants have opposed this motion (docket item #67). After consideration of the parties' briefing, the court has determined that Plaintiff's motion to recuse this court is denied. In the following discussion, the court gives its reasons for the decision.

I. Background

Based upon the pleadings and briefs presented by the parties, it appears that this case originated because of a dispute over a lease between Plaintiff Elaine Karas and Plaintiff's tenants. This dispute was previously the subject of a lawsuit, originally captioned Pietersen, et al., v Karas, Docket no. Mon-L-1011-03, filed on February 28, 2003 by the tenants against Plaintiff in the Superior Court of New Jersey, Monmouth County, Law Division. The tenants moved on April 25, 2003 for the entry of default judgment against Plaintiff, which was granted on May 19, 2003. Pursuant to a September 29, 2003 hearing, Defendant Judge Gilroy found that Plaintiff had not been properly served by the tenants with a copy of the Summons and complaint and he, therefore, vacated the default against Plaintiff and directed her to file a responsive pleading within thirty five days. Plaintiff subsequently answered the complaint on November 3, 2003.

More than a year later, on October 4, 2006, Plaintiff moved to dismiss the tenants' complaint for failure to provide adequate discovery. The court scheduled oral argument on the motion to dismiss for October 20, 2006 but the motion date was adjourned when the court was informed that the tenants had not received a copy of Plaintiff's motion to dismiss. Before the motion to dismiss was heard, Defendant Judge Lawson transferred the case to Judge Peterson of the

Superior Court, Ocean County Law Division based on allegations made by Plaintiff of improper behavior by Defendants Judge Gilroy, Judge Locascio and Judge Lawson. On January 5th, with Plaintiff absent, Judge Peterson entered an Order denying without prejudice Plaintiff's motion to dismiss. The Office of Civil Case Processing then scheduled a trial date for March 19, 2007 and noticed all parties of the date. Based on Plaintiff's failure to appear, Judge Peterson ordered an entry of default against Plaintiff and in favor of the tenants.

On October 22, 2008, Plaintiff filed a complaint in this court, alleging that the defendants conspired to deprive her of her civil rights and her rights to the fair adjudication of her claims and defenses in the underlying state court action (docket item #1). On September 9, 2009, this court dismissed claims against various defendants, denied Plaintiff's motion for sanctions and motion for default judgment. Plaintiff claims that the undersigned is not impartial and thereby must be removed from this action.

II. Recusal Pursuant to 28 USC §455(a) or §144

Title 28 U.S.C. §455(a) provides, "[a]ny justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The other applicable recusal statute, Title 28 U.S.C. §144, provides "[w}henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein." [1] Under 28 U.S.C.§455(a),

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[1] Although Plaintiff explicitly moves under §455(a), the court is (continued...)

it is not the case that a judge should recuse himself where, in his Opinion, sitting would be inappropriate. The correct inquiry is whether the judge's impartiality has been reasonably questioned. Blanche Rd. Corp. v. Bensalem Township, 57 F.3d 253, 266 (3d Cir.1995). An alternative means of recusal is governed under Title 28 U.S.C.§144, which enables recusal upon timely submission of an affidavit and supporting certificate of good faith. Here, Plaintiff has submitted both an affidavit and accompanying certificate.[2] This Circuit has held that the challenged judge must determine only the sufficiency of the affidavit, not the truth of the assertions. Mims v. Shapp, 541 F.2d 415, 417 (3d Cir.1976). This Circuit has also held that the allegations in a §144 affidavit must convince a reasonable person of the judge's impartiality. United States v. Dansker, 537 F.2d 40, 53 (3d Cir.1976).

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[1] (...continued)
satisfied that the motion can be analyzed by this court under both §455(a) and §144. If a recusal motion is made pursuant to §455, the questioned judge is entitled to rule upon the motion. If the motion is made pursuant to §144, another judge must rule on the recusal motion so long as the supporting affidavit meets the "sufficiency test." In re Kensington Int'l Ltd., 353 F3d 211, 244 (3d Cir.2003). The court is satisfied that the supporting affidavit does not meet the "sufficiency test" and, hence, may be ruled upon by this court.

[2] The court is aware of judicial decisions in this circuit that have questioned the validity of disqualification motions submitted in response to adverse rulings. In re Kensington Int'l., 368 F.3d 289, 314-315 (3d Cir.2004) (positing that when a party "is aware of the grounds supporting recusal, but fails to act until the judge issues an adverse ruling, the recusal [typically] is not timely.') Given such authority, the court is hesitant to conclude that Plaintiff's disqualification motion is timely. This hesitation, however, is of little significance, as the court holds that the supporting papers are conclusory and insufficient to convince a reasonable person of the court's impartiality.

The court is not convinced that recusal is appropriate under either 28 U.S.C §455(a) or 28 U.S.C. §144. The court declines to recuse itself under §455, as the court is not convinced that its impartiality has been *reasonably* questioned. Blanche Rd., 57 F.3d at 266 (holding that the correct inquiry is whether the judge's impartiality has been reasonably questioned). The court is satisfied that a reasonable person would not be convinced of the court's impartiality after reading Plaintiff's moving papers. Plaintiff's motion is largely conclusory and devoid of factual allegations that would render recusal appropriate. Liteky v. United States, 510 U.S. 540, 555 (1994). Similar, removal under 28 U.S.C. §144 requires an affidavit of *fact* that must convince a reasonable person of the judge's impartiality. Dansker, 537 F.2d at 53. Here, Plaintiff's affidavit simply concludes that ex parte communication, bribery and favoritism has occurred, without including assertions of fact in support of these conclusions.[3] A conclusory affidavit is not sufficient for recusal. Smith v. Vidonish, 210 Fed.Appx. 152, 155 (3d Cir 2006) (holding that conclusory statements in a recusal affidavit need not be credited).

Specifically, Plaintiff alleges that this court has "actual and deep-seated bias," "intentionally aids and abets, via [] secret ex parte collaboration and contribution, acts of outright fraud upon a court in written filings by each defense counsel," and has received "personal incentive[] in exchange for agreeing

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[3] Needless to say, none of the asserted improprieties which Plaintiff alleges, in fact, occurred. The court is satisfied that its legal analyses have been correct and that it has not had any personal conduct or ex parte communications with any of the parties or lawyers in this case. But, of course, this is not the standard on which the court is required to use, and does use, in ruling on this motion.

to deliver a predetermined case outcome." Plaintiff's motion to recuse is full of such conclusory allegations. It is well-established that a court need not credit conclusory allegations or legal conclusions. Morse v. Lower Merion School District, 132 F.3d 902, 906 n.8 (3d Cir.1997). The few facts alleged by Plaintiff do not demonstrate that the court's impartiality has been reasonably questioned. Blanche, 57 F.3d at 266. For example, Plaintiff asserts that "Chesler delivered on his end of the [deal] by dismissing with prejudice two of the three sets of defendants." A party may not make such unwarranted assumptions based on the fact that the party was unsuccessful. Were this not the case, any unsuccessful litigant would be able to disqualify the judge who rendered the unfavorable ruling. In short, a party's disagreement with a court's ruling is not a basis for recusal. In re TMI Litig., 193 F.3d 613, 728 (3d Cir.1999).

Plaintiff also notes that defense counsel electronically filed a letter dated April 29, 2009 (docket item #27), whereby counsel requested a stay of pending motions until the court ruled on the pending motion to dismiss. Plaintiff states that defendant issued "an ex parte personal letter to judge dated 04/29/09...[and] this letter, which has not been provided to Plaintiff to date, is proof of *contractus criminis*." A request to stay pending motions is an acceptable request, and no indication of any impropriety or unlawful ex parte communication. In re Jarvis, 2006 U.S. App. LEXIS 29006, at *3 (speculative assertions of ex parte communication need not be credited). The recusal motion also states "Plaintiff's FRCP 4(m) motion was ignored." Plaintiff's argument appears to be that the failure to rule upon said motion is evidence of bribery, favoritism and ex parte communications. In truth, the decision to

postpone a ruling is in furtherance of judicial efficiency. The court knew that its Opinion and Order dated September 9, 2009 would dispose of most, if not all, of Plaintiff's pending motions. As a matter of judicial efficiency, the court opted to postpone decision on Plaintiff's motion in light of the September 9, 2009 ruling and in light of the pending motion to dismiss. Justifiable delay in motion ruling is not grounds for recusal. See, e.g., In re Jarvis, 2006 U.S. App. LEXIS 29006, at *3 (3d Cir. 2006) (holding that the judge's handling of motions is not "extreme enough to support a claim of bias or partiality.")

Plaintiff also asserts, as evidence of collusion and bribery, that the undersigned "literally plagiarized [defendant's] brief" in drafting the background section of this court's prior Opinion. The background section of this court's opinions are merely to provide context and constitute no part of the court's analysis, and is not any indication of improper behavior. Plaintiff also alleges that the delay in docketing her motions is evidence of collusion. "See, in particular, #23 (filed on 04/24/09 but not entered into docket until 04/30/09...establishes collusion between clerk and judge to prejudice my rights." The delay in docketing pro se motions is commonplace and a function of our judicial systems and in no way an indication of improper collusion. Similarly Plaintiff improperly concludes that the undersigned was colluding with defendants due to the fact that the undersigned "backdated his order (#47) to 05/20/09." The court concedes that the text of the order demonstrates that the order was signed and executed on 5/20/09, but that the order was not entered onto the docket until 05/26/09. The time between execution of an order and actual filing on the docket is no indication of improper behavior. In short, Plaintiff has not alleged any facts

that would warrant the recusal of the undersigned. As Plaintiff has not met the requirements of 28 U.S.C. 455(a) or 28 U.S.C. 144, it is hereby ordered that Plaintiff's motion for recusal is denied.

III. Conclusion

For the aforementioned reasons, Plaintiff's motion to recuse the court (docket item #65) be and hereby is denied. An appropriate order will be filed.

s/Stanley R. Chesler
Stanley R. Chesler, USDJ

Dated: December 17, 2009

II. Order Denying §455 Motion (12/17/09)

NOT FOR PUBLICATION CLOSED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Elaine Karas, Civ A, No. 08-5264 (SRC)
Plaintiff

v ORDER

Spencer B Robbins, et. al,
Defendants [complete caption omitted]

Chesler, U.S.D.J.

This matter comes before the court on the application of Plaintiff Elaine Karas to recuse the court (docket item #65). Defendants have opposed this motion (docket item #67). The court has carefully considered the submissions of the parties in support of and in opposition to this motion. For the reasons set forth in the Opinion filed herewith, and for good cause shown,

It is on this 17th day of December, 2009,

ORDERED that Plaintiff's motion to recuse the court be and hereby is DENIED.

s/Stanley R. Chesler
Stanley R. Chesler
United States District Judge

Dated: December 17, 2009

III. Opinion: Chesler USDJ (01/22/10)

NOT FOR PUBLICATION CLOSED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Elaine Karas, Civ A, No. 08-5264 (SRC)
Plaintiff

v ORDER

Spencer B Robbins, et. al,
Defendants [captioned shortened]

Chesler, U S.D.J.

This matter comes before the court on the motion for declaratory judgment filed by Plaintiff Elaine Karas (docket item #66). The motion, in part, reiterates that the undersigned should be disqualified and the court's September 9, 2009 ruling should be vacated. The court already denied such requests in its prior opinions and orders (docket item #69, 70-72). Consequently, the motion for declaratory judgment (docket item #66), to the extent it seeks recusal of the undersigned and vacation of the September 9, 2009 order, will be DENIED.

The motion for declaratory judgment also seeks a holding that, among others: 1) "the presence of noxious judicial in an opinion is evidentiary and probative of the extrajudicial," 2) "Opinions that show substantial deviation from fact or law in their content...are thereby evidentiary and probative of the presence of noxious extrajudicial factor having motivated the fact finder," 3) "when the Circuit discovers noxious judicial in an opinion and reverses its order, then the Circuit: (i) will make a specific finding documenting the presence of noxious judicial, and (ii) will rule that the issuing judge is thereby *ipso facto* disqualified from continuing to preside on that case..." In essence, Plaintiff requests relief regarding the judicial administration of cases, without reference to any common law or statutory basis for such changes. The court is not empowered to rule upon the relief requested by Plaintiff.

It is on this 22nd day of January, 2010,

ORDERED the motion for declaratory judgment filed by Plaintiff Elaine Karas (docket item #66) be and hereby is DENIED, and it is further

ORDERED that, as all parties have been dismissed, this case be and hereby is CLOSED.

s/Stanley R. Chesler
Stanley R. Chesler, U.S.D.J.

Dated January 22, 2010

IV. 3d Circuit Opinion (03/30/10)

CLD-141 NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1233

IN RE: ELAINE KARAS, Petitioner

On Petition for Writ of Mandamus from the
US District Court for the District of New Jersey
(Related to DC Civil Action No. 08-cv-5264)

Submitted Under Rule 21, Fed. R. App. P.

March 4, 2010

Before BARRY, FISHER, STAPLETON, Circuit Judges

(Opinion filed: March 30, 2010)

OPINION

PER CURIAM

In February 2003, following a dispute over a residential lease, former tenants of Elaine Karas filed an action against her in New Jersey Superior Court seeking the return of a security deposit. In March 2007, the Superior Court entered default judgment against Karas after she failed to appear for trial. In October 2008, Karas brought an action in the district court alleging that her former tenants and several state court judges conspired, during the pendency of the state court action, to deprive her of her civil rights and her right to a fair trial. Defendants filed separate motions to dismiss the complaint. In a December 28, 2009 order, the district court granted the final motion to dismiss on the basis that it failed to state a claim

upon which relief may be granted. However, the docket reflects that the district court did not close the case until January 22, 2010, when it ruled on the final outstanding motion in the case -- Karas' motion for declaratory judgment.

On January 21, 2010, Karas filed in this Court a petition for a writ of mandamus asking us to: 1) remove the district court judge assigned to the case; 2) vacate all of the district court's prior orders; and 3) remand the case to state court. Karas alleges that the district court judge has engaged in improper behavior, including communicating ex parte with defense counsel and deliberately refusing to docket and/or review certain of her filings, including several motions for sanctions. Karas further alleges that the district court has repeatedly misrepresented the facts of the case in its rulings and has intentionally falsified and misapplied the law in order to "justify a particular outcome." (Petition for Writ of Mandamus at 2.)

A writ of mandamus is an extraordinary remedy. See Kerr v US Dist Ct., 426 U.S. 394, 402 (1976). Within the discretion of the issuing court, mandamus traditionally may be "used...only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" Id (citations omitted). A petitioner must show "no other adequate means to attain the desired relief, and...a right to the writ [that] is clear and indisputable.'" See In re Patenaude, 210 F3d 135, 141 (3d Cir.2000) (citation omitted).

Karas previously filed a motion in the district court to disqualify the district court judge pursuant to 28 U.S.C. §455. The district court denied the request. Mandamus is the proper means by which we review the denial of a recusal motion filed pursuant to §455. See Alexander v Primerica Holdings, Inc., 10 F.3d 155,

163 (3d Cir 1993). Our inquiry is "whether the record, viewed objectively, reasonably supports the appearance of prejudice or bias." See In re Antar. 71 F3d 97, 101 (3d Cir.1995). Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion and mandamus is not a substitute for appeal. Liteky v U.S., 510 U.S. 540, 555 (1994); Cheney v U.S.Dist.Ct., 542 U.S. 367, 380-81.

The record does not reasonably support the appearance of bias or prejudice on the part of the district court judge. Karas' allegations are unsupported by any facts suggesting that the district court judge has acted improperly or that he is biased against her. Certainly, the district court's alleged improper recitation of the facts of the case in its rulings does not constitute such a gross abuse of discretion that recusal is warranted. To the extent that Karas claims error in those rulings, she may appeal those decisions to this Court. Id. Moreover, Petitioner's case has been closed in the district court and a request to recuse the district court judge at this point is moot.

Karas also asks that we vacate all of the district court's orders and remand the matter to state court for further proceedings. Karas appears to base her request on the alleged improper behavior of the district court judge. However, we have concluded that the record does not support Karas' allegations of impropriety. Furthermore, other than claiming that the district court has misrepresented the facts of the case in its prior orders, Karas has not described any specific errors made by the court in those rulings.

For the foregoing reasons, mandamus relief is not appropriate. We will deny the petition.

[Opinion ends here with no signatures or names]

V. 3d Circuit Judgment Order (03/30/10)

CLD-141

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1233

IN RE: ELAINE KARAS,
Petitioner

On Petition for Writ of Mandamus from the
US District Court for the District of New Jersey
(Related to DC Civil Action No. 08-cv-5264

Submitted Under Rule 21, Fed. R. App. P.

March 4, 2010

Before BARRY, FISHER, STAPLETON, Circuit Judges

JUDGMENT

This cause came to be heard on petition for writ of mandamus March 4, 2010. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the petition for writ of mandamus be, and the same is, denied. All of the above in accordance with the Opinion of the Court.

ATTEST:
/s/ Marcia M. Waldron,
Clerk

VI. Petition for Mandamus Writ (01/19/10)

In re ELAINE KARAS
CASE NUMBER: 10-1233

01/19/10
PETITION FOR
WRIT OF MANDAMUS

submitted to

THE UNITED STATES COURT OF APPEALS
THIRD CIRCUIT

Oral Argument is Requested
and should be allowed
due to significant issues of
First Impression

Elaine Karas, Petitioner *pro se*
22R Wesley Street
Monmouth Beach NJ 07750
(732) 222-5528
elainezyx@yahoo.com

In re Karas

PETITION TO THIRD CIRCUIT
FOR WRIT OF MANDAMUS
to Remove USDJ Chesler, to Vacate his Orders, and
to Reassign This Case

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Certificate of Compliance with FRAP 32(a) [omitted]
Certification of Service on Interested Persons [omitted]
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In re Complaint of Judicial Misconduct, 425 F3d 1179 (9th Cir.2005)
In re Kensington International Ltd et al, 353 F3d 211 (3d Cir.2003)
In re School Asbestos Litigation, 977 F2d 764 (3d Cir.1992)

INTERLOCUTORY STATUS OF CASE

Petitioner certifies pursuant to 28 U.S.C. §1746 and under penalty of perjury that the underlying case is not suitable for review by Appellate process, as the following applications were either never set to calendar or the arguments were not reviewed by the district court and are thus unappealable per se.

02/18/09	Plaintiff First Amended Complaint
03/05/09	Plaintiff Addendum to First Amended Complaint
04/24/09	Plaintiff FRCP 4(m) motion
04/24/09	Plaintiff Rule 11 Motion Against Robbins
04/24/09	Plaintiff Rule 11 Motion Against Powers
04/24/09	Plaintiff Motion for Default Judgment Against GSS Inc

05/11/09	Plaintiff Certification re Powers' Waiver Scam & LRCP 6.1 Extension Scam
05/22/09	GSS Inc FRCP 55(c) Cross Motion to Lift Entry of Default
05/29/09	Powers; Motion to Dismiss
07/02/09	Application for Enforcement of Due Process Rights and Demand for Ex Parte Documents
10/29/09	Motion for Declaratory Judgment

ARGUMENT FOR GRANTING ORAL ARGUMENT: The Presence of Significant Issues of First Impression

1. Assuming that plaintiff can prove that her right to appeal a state court judgment was taken away from her by acts of fraudulent concealment by defendants (hiding the judgment), is 28 U.S.C. §1257 even implicated? Can a judge issue an Order and take the right to appeal that Order away from a litigant through intentional concealment?

2. Does the Third Circuit agree with the precedent of the Fifth Circuit where they recognize that when a state court judgment is tainted by bribery of the state judge, then lower federal courts have jurisdiction in review of the state court judgment under their equitable (inherent) power? *Browning v Navarro*, 826 F2d 335 (5th Cir.1987).

3. Does criminal conduct by a judge in his official capacity (e.g., falsification of public record or CM/ECF, fabrication of evidence, etc) with the intent of misuse of office for personal gain, constitute judicial act that is properly protected by immunity?

4. The Supreme Court in *Exxon Mobil Corporation v Saudi Basic Industries Corporation*, 544 US 280 (2005) established that a Plaintiff has a right to collaterally attack a state court judgment in a federal court (such suit would be governed by §1738 which is completely independent of §1257).

No established case of the Third Circuit was located to confirm such right. The underlying case would establish such precedent.

5. Is a party's right to transparency in a judicial proceedings a constitutional right or it is subject to the judge's "discretion"? If a judge has the "discretion" to determine how much transparency to afford a party, then in what way is that not an incentive for a judge to market his judicial decisions in back room dealings?

6. The extrajudicial does not and cannot exist in vacuum. Extrajudicial motive can be found only in the judicial. Are substantial deviations from law and fact sufficient to establish a bribed judge? See my 10/29/09, Appx #32.

I. RELIEF SOUGHT

1. Vacate all Chesler orders;
2. Remand case to Camden to an honorable judge with directive to recommence the suit such that all prejudice incurred to my case by Chesler is removed and issue specific instructions as are appropriate in this matter;
3. Or, in the alternative of (2), issue a finding of defendant liability on damages for each defendant and remand to an honorable judge in Camden for discovery and then assessment of damages by jury trial;
5. Costs to be borne by defendants or, preferably, by Chesler himself;
6. For such other and further relief as Circuit judges deem to be appropriate.

II. ISSUES PRESENTED

a. What is the Third Circuit's position regarding attorneys repeatedly committing instances of the concept of "fraud upon a court" and this conduct being

disregarded by the district court who is the recipient of those fraudulent and perjurious documents?

b. If an attorney commits fraud upon a court and the judge ignores it because he is a coconspirator in that fraud, then does the attorney's conduct still count as "fraud upon a court," given that the judge was not deceived by the fraud? Is such tolerant conduct by the judge evidentiary of him being an accomplis to the fraud and perjury?

c. What is the Third Circuit's position if a judge creates Opinions: (a) where he intentionally misrepresents the facts of a case or creates arrant fiction; (b) plagiarizes the Statement of Facts from a defense counsel's brief virtually word for word and then (fraudulently) represents that account as being complaint averments; and (c) intentionally falsifies, distorts, or misapplies law in order to "justify" a particular outcome? Will that judicial conduct be viewed as merely "abuse of discretion" or as fraud upon the Supreme court by a district court? Is it evidentiary of a bribed judge?

d. Does a litigant have a right to total transparency in the procedural activities of his/her case? Robbins faxed a letter ex parte to Chesler. Does the plaintiff of the case have a right to Robbins' fax records to learn the actual destination of where that fax was sent, the fax records of that person, and the details of that arrangement?

e. Does the backdating of an Order by a judge to cover up for an ex parte communication with counsel together with a record of phone and fax contacts between the judge and that counsel, constitute falsification of the federal CM/ECF system or of a pubic record? Is it properly viewed as the fabricating of false evidence? Does such conduct by a judge constitute a judicial act that is protected by immunity?

f. Can a judge choose to eschew ruling on FRCP 4(m) motion to perfect service in order that he can have a sham "basis" for dismissing the complaint on the purported ground of "defective" service?

g. Can a judge rule in favor of a defense counsel on a Rule 11 motion for sanctions when that counsel offered no Opposition to the charges of fraud and perjury?

h. If a district court silently allows a defense counsel to self-issue Waivers, as dilatory tactic, after proper service of clients by process server, is that judicial conduct more than just an abuse of discretion? Is it evidentiary of illicit relationship with that counsel?

III. STATEMENT OF FACTS

A. Precis of Background to the Federal Action

1. The state case arose as a result of the two Pietersen respondents, then Petitioner's tenants, demanding that Petitioner commit illegal acts (violative of both borough and federal law) by allowing them to bring into the single family-zoned leasehold an unrelated illegal alien couple from whom they would garner undocumented rents and services. When Petitioner refused, the Pietersens precipitously moved out, leaving considerable damages to the leasehold and unpaid rent. The couple then sought the assistance of respondents Spencer Robbins, his staff attorney Rothman, and his law firm to find an unlawful way to release them from the obligations of their lease contract that they had just breached. Robbins had an established illicit relationship with a corrupt judge, respondent Gilroy (then PJSC), who was running a clandestine "default judgment for sale" criminal side-business out of the Monmouth vicinage that *inter alia*

was geared toward relieving prospective plaintiff "clients" of their contractual debts through judge-mediated scam(s).

2. The deal between Robbins and Gilroy for predetermined case outcome for the Pietersens was in place, and consideration advanced to Gilroy therefor, prior to the filing of complaint. Gilroy PJSC then monitored the case assignment wheel and alerted Robbins of the precise filing time that would cause the case to be assigned to Gilroy docket. Robbins immediately filed a complaint with cover letter and check to cover filing fee but no Summons was *ever* created, authenticated, filed, or served. A Track Assignment Notice was generated but no correspondence was created and no service affidavit got filed. The case remained pending for a period of about two months in that inchoate state of initial transmittal letter, complaint, and Track Notice.

3. Robbins then prepared an attorney Certification for entry of Default against Petitioner. But Robbins knew that he was committing crimes that could cause him to be disbarred. So, in order to have a sham cover should his fraud be one day exposed, Robbins instructed his paralegal to forge his signature on his own attorney Certification for Default Entry with oath jurat. Respondent GSS Inc, an essential component in the Gilroy-run scams, prepared a wholly fraudulent Service Affidavit embracing dates that were provided to GSS Inc by Robbins and personal characteristics of Petitioner that were provided by the Pietersens so as to make it fraudulently appear that *in personam* service upon Petitioner had obtained. Robbins then instructed his paralegal to draft a cover letter to Gilroy (devoid of "cc" line to defendant) requesting that a Proof Hearing be set up based on her enclosed forged attorney Certification and the fraudulent service

affidavit. These were mailed directly to chambers. Gilroy then entered into courthouse ACMS (the statewide court automated case management software) the alleged defendant Default for "failing" to Answer complaint. By way of this illicit tactic, Gilroy and Robbins were able to bypass clerk intake desk where the said default entry Request would have been rejected by clerk for failure of Summons and for failure to timely file proof of Service. A couple of weeks later, Gilroy again entered ACMS and aborted the 120-Day automatic dismissal.

4. Despite Gilroy's entry of Default, no motion for default judgment was ever filed. No court tape exists for any hearing on the issue. Instead, Gilroy simply wrote "OK, set up" on the paralegal letter requesting Proof Hearing and his staffer provided a date, also noted by hand on that letter, which was then returned to Robbins. Robbins then wrote a letter to his clients informing of the date for the awarding of damages to them at Proof Hearing, with a "cc" line copying Petitioner on that attorney-client correspondence. Petitioner learned of the lawsuit covertly filed against me months earlier from that letter.

5. The above is the recipe for Gilroy's clandestine "default judgment for sale" criminal side-business. The victim defendant has no knowledge of a lawsuit having been filed until it is too late to do much about it. The judge is ready to enter figures into a judgment. Most victims settle at this point and the case closes with the Gilroy-Robbins-GSS Inc partnership secret in tact and ready for perpetrating on the next victim defendant. Since a judge is mediating the scam and monitoring the ACMS, it is a virtually failsafe criminal side-business run on the machinery of justice in the people's courthouse. The scam ran into a problem with Petitioner because I fought Gilroy and Robbins at

every juncture and would not settle. Despite my written and oral protests about Gilroy not having jurisdiction over me due to failure of Summons and service, he refused to dismiss the case or order that Robbins obtain proper Summons and effect proper Service. I protested that such is contrary to Rule. Gilroy disregarded my protests and was intent on creating the judgment. It was only when I stated that I intended to take the matter to Appeal that he relented and ordered me to produce an Answer. I never waived service but I was fearful to go against his directive. As I left his courtroom after that hearing wherein the Pietersens did not get their judgment, Regina formed her hand into a gun and pointed it at me. Within 10 days, all the wires under the hood of my car were slashed and its computer sabotaged in loan shark tactic to induce settlement. It totaled the car.

6. Gilroy recused after *inter alia* his ex parte phone calls to Robbins were exposed. He reassigned the case to his team partner, Locascio, in violation of R.1:12, but continued to exercise influence over the case even after leaving the vicinage some months after recusal. This included altering ACMS in attempt to force resolution of the case through mediation, removing incriminating evidence from the file, and using clerks and other judges in the vicinage as a long arm to assist the defeating of my civil rights in the case.

7. After enduring a malicious abuse of process spanning three years with a dearth of civil rights, Petitioner was finally able to obtain leave to file a motion. This was not previously available. I filed a motion to dismiss complaint on grounds of Robbins' total failure to provide discovery in the matter. Robbins was so confident of being awarded predetermined case outcome from Respondent Locascio that he never bother to issue Opposition. Petitioner

then filed a "Reply to NonOpposition" wherein *inter alia* I demanded my unopposed relief. This caused a problem for Locascio, who had no self-protective "story" to spin about why he would deny my unopposed motion. Further, Robbins was now demanding that he be awarded a judgment of about $36K as compensation for the time he had put into the case as result of my refusal to settle.[4] Robbins further informed Locascio that he had contacted his college roommate, respondent Peterson JSC of Ocean County, who was willing to deliver such excessive judgment. Locascio agreed to falsify the ACMS [court computer] records in order to facilitate bringing Peterson in as new motion judge. Locascio went into Monmouth ACMS on the Return of 10/20/06 and falsified the status of my 10/04/06 motion by changing its "pending" status to the false notation that I had withdrawn it. He also set a new motion hearing for 11/03/09 in Freehold so that Peterson could deliver the fat judgment. The critical issue for them then became the producing by Robbins of an Opposition to my dismissal motion.

8. The problem was that since the 10/04/06 motion protocol had closed and its Return had come and gone, the Monmouth vicinage ACMS would not permit the untimely entering of Opposition. Respondents Robbins, Locascio, Lawson, Gilroy, Serpentelli, and Peterson then conferred on the matter. They changed the plan. The 11/03/06 hearing in Freehold was

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[4] Note that the Demand of the complaint sought only the return of a $1950 security deposit and a $600 pet deposit and was filed in Law Division (amounts over $15K) instead of Special Civil Division (amounts under $15K). This was because in Special Civil the clerks serve Summons and Complaint via Certified Mail. Only in Law Division can an attorney pull the "default judgment for sale" scam because the scam hinges on a fraudulent service affidavit and failure of actual service.

canceled in favor of secretly ousting the case to Ocean County -- in absence of due process -- wherein it would be possible to get the false evidence entered into the Ocean vicinage ACMS by intake clerk so that Peterson could have a bogus basis for denying my 10/04/06 dismissal motion. Robbins prepared a 10/27/06 Opposition Certification wherein he intentionally falsified facts. Again, as prudential tactic, he had another person forge his signature upon that legal instrument. That maladroit forged signature (unlike the forged signature on his attorney Certification for entry of Default) does not appear to have been executed by his paralegal. It may have been executed by his staffer whose initials are "SA." Robbins then submitted to clerk a 10/27/06 cover letter (typed by "SA") addressed to Locascio (instructing him to stamp and enter the original and return the copy of the enclosed Opposition Certification) together with a sealed envelope marked "personal and confidential" to Locascio. Upon receipt thereof, Locascio first went into the ACMS and fraudulently documented as "fact" that the 11/03/06 motion hearing was canceled on (false) ground that my motion had been withdrawn. He next placed Robbins' false evidence into the case file and handed same to Lawson who -- in total absence of due process or subject matter jurisdiction -- mailed the file carrying its fraudulent payload to Ocean vicinage. Ocean intake clerk entered the file's contents into ACMS. But she did not know what to do with the unentered, unstamped Opposition Certification. Peterson directed her to enter it into ACMS but she knew that something was not right; hence, she documented *that* fact in ACMS record. Peterson then went into ACMS and fraudulently altered Monmouth County records, changing *their* status of Opposition on my 10/04/06 motion from "N" to "Y."

9. Note that the facts that: (1) the case was predestined to be transferred to college roommate Peterson and to no other judge; and (2) the case would require criminal conduct on the part of the newly assigned Ocean County judge, together entail that Ocean AJ Serpentelli was in on the late October 2006 planning scams. For a truly random assignment in Ocean would not secure the criminal outcome demanded by Robbins. Hence, Serpentelli had to agree prior to transfer to thwart the case assignment wheel upon receipt of the case. The Ocean judge assigned to the case had to be willing to commit the following crimes and only a truly good buddy of Robbins would do so. These crimes (committed by Peterson) were: **(a)** to deliver approximately $36K in judgment on a complaint asking for $2550; **(b)** to divest Petitioner of her civil rights in order to achieve that judgment including, but not limited to, forestalling my rights to file Reply to Robbins' new Opposition, to contest jurisdiction., to have a copy of the transfer Order; **(c)** to break into the Monmouth County ACMS case file record in order to fraudulently alter *their* documented status of Robbins' failure to issue Opposition to my 10/04/06 dismissal motion; **(d)** to fraudulently (mis)represent in Opinion that Petitioner had completed the motion protocol process by having issued a Reply to Robbins' newly crafted Opposition; **(e)** to instruct the Ocean intake clerk to enter the newly crafted unstamped, unfiled Robbins Opposition into Ocean ACMS; and **(f)** to do all of this in absence of Summons, jurisdiction, and due process both on the transfer and on any other decision.

10. Petitioner had no knowledge of and was allowed no due process on the secret case ouster from Monmouth County. Lawson never provided me with a copy of the "transfer" order. All I got was a copy of

his cover letter to Serpentelli. My written demands to Lawson, Peterson, Serpentelli, and Ocean's PJ Buczynski for this document were simply disregarded. No Ocean County Summons was ever prepared, authenticated, filed, or served upon me. No Track Assignment or other such initial document pertaining to the Ocean matter was served. No motion protocol was set up for the due process adjudicating of the newly filed Opposition. Petitioner was not allowed to issue Reply or to have a copy of the version of document that was filed in Ocean so as to ensure that it was identical to what I had received prior to ouster. Once the file was in Ocean vicinage, it was held hostage in Peterson's chambers in order to forestall my ability to obtain a copy of the Lawson Order to appeal the "transfer." All of my written protests that jurisdiction precedes adjudication of merits and that I was being divested of my federal civil rights and my request for a hearing on the issue were disregarded. I thus took a stand on my federal civil rights and refused to make an appearance. A default judgment was entered against me in the amount of approximately $36K in face of a complaint with ad damnum of $2550. No judgment was ever mailed or served upon me. The file was then again held hostage in Peterson chambers until the collapse of that Appeal period. Once I was allowed to review the file, it contained neither judgment nor documents from the Proof Hearing. It was not until almost one year later, when Robbins tried to collect on the judgment via financial subpoena, that I learned that a judgment had indeed been entered. But no copy was *ever* provided to me and the first time that I saw it was as attachment (Exhibit "L") to Power's 05/29/09 dismissal motion.

11. One of the felonies committed by these judges acting under color of state law in collusion with

Robbins was the crime of breaking into and defeating the electronic ACMS surveillance system set up by the State's Supreme Court to protect every Party's civil rights on motion protocol. This is tantamount to breaking into the Federal Reserve and was but one of the crimes that Chesler has shielded from accountability under §1983.

12. All of the above information was before Chesler upon rendering his Opinions.

a. The above facts are laid out in even greater detail in my 02/18/09 First Amended Complaint (Appx #12) and its 03/05/09 Addendum (Appx #13).

b. The forged signature on Robbins' Certification for Entry of Default is present as Exhibit #6 attachment to my 04/24/09 Rule 11 Sanctions Motion against Robbins (see Appx #18, p44).

c. The forged signature on Robbins' 10/27/06 Opposition Certification is present as Exhibit #4 attachment to my 04/24/09 Rule 11 Sanctions Motion against Robbins (see Appx #18, p42).

d. The paralegal letter requesting Proof Hearing with Gilroy's "OK set up" is present as Exhibit #7 attachment to my 04/24/09 Rule 11 Sanctions Motion against Robbins (see Appx #18, p45).

e. The fraudulent alteration by Locascio from pending (i.e., "P") motion status on 10/20/06 to withdrawn (i.e., "WD") motion status in ACMS is present in Exhibit "E" of the 09/09/09 Pallotto dismissal motion (see Appx #57).

f. Locascio's creation and then cancellation of the 11/03/06 hearing based on allegedly "withdrawn" motion is present at "Page 5 of 7" in Exhibit "E" of the 09/09/09 Pallotto dismissal motion (see Appx #57).

g. The fraudulent alteration by Peterson from "No" Opposition (i.e., "N") filed against my 10/04/06 motion to "Yes" Opposition (i.e., "Y") filed against my 10/04/06

motion is described in my Amended on Page 22 at Lines 444-445 (see Appx #12).

h. A listing of the provable facts in the state matter is presented in my §455 Disqualification motion at its Addendum #2: "The Skeletons of Felony that Chesler was contracted to bury on behalf of the defendants" (see Appx #35, p1).

13. Yet, despite the fact that Chesler was fully aware of the above averments and evidence, none of this is even hinted at in any of his Opinions. Instead, he literally plagiarized the entire historical section of the Powers dismissal brief and used it as the factual background section of his Opinion. This is proven in my 10/19/09 Opposition with Cross-Motion (see Appx #30, p7ff).

B. Overview of The Case in Newark

14. In lieu of acting as an impartial trier of fact, Chesler has functioned in this case *ab initio* as a commandant engaged in personal warfare against Petitioner to defeat my §1983 case against his ABA colleagues. He has actively directed (or mediated) hostility against my case from four factions: the clerks and the three sets of counsel of record. Despite the fact that my complaint became filed on 10/22/08, it did not get entered into docket until 10/31/09. This suggests, together with other evidence (especially clerk conduct), that Chesler contacted one of the judiciary defendants within the (10) days following filing to inform of my §1983 case. Given Chesler's conduct over the duration of this suit, there can be no doubt that an extrajudicial concordat was indeed reached where Chesler did agree to act on behalf of defendants to defeat my case. This legal conclusion shows impeachable crime. This legal conclusion is well-supported by review of the conduct set forth by each of

the four said factions as described in the documents of the Appendix.

a. Clerk Conduct. There is a pattern of inimical clerk conduct that was in full bloom on 02/18/09, the day of the filing of my Amended and seeking the sealing of prepared Summonses just prior to collapse of R.4(m) period. Despite the fact that I had called ahead and had received assurance that my prepared Summonses would be authenticated with short wait, Clerk Michael, fully primed with pompous payload, refused both to allow these Summonses to be processed or to allow a supervisor to present to intake counter to review his refusal. The process server thus had no choice but to serve the addressed but unauthenticated Summonses and to then repeat Service with authenticated Summonses. The entire set of prepared Summonses left for authenticating *and* my filed Amended complaint then "disappeared" from courthouse on 02/18/09 and have not been located to date. Michael also subsequently refused to accept the process server's Returns for filing and provided false filing information to me with clear goal to defeat my case. The said malicious conduct is described in my 04/24/09 R.4(m) motion (see Appx #24).

b. Additional anomalous clerk conduct includes the fact that all of my filings, commencing with initial complaint, were neither entered into docket nor calendared upon receipt but, instead, were forwarded directly to Chesler for his determination on what action should be taken on them. This practice had several untoward results.

(1) Some filings that I mailed to the court likewise "disappeared" and did not make entry into docket despite the fact that Donna or Andrea confirmed by phone as to having received the same. An example of this is my 04/27/09 application to

Chesler which appears nowhere in docket. Another example is my 05/18/09 Opposition to Pallotto's motion (for leave to file Opposition to my extant default judgment motion). My said letter is referenced in her filing, Dkt #39, but there is no separate entry, as there should be, for my actual Opposition that was mailed to the court. Such losses of work product forced me to hand-deliver most filings and since I could not always do this, some items did not get filed contemporaneously. An example is the set of numerous Demands, served on each counsel and Clerk Andrea, asserting my due process right to ex parte-filed documents and ones with missing or illegible pages or missing exhibits. These Demands got filed subsequently by inclusion with my Exhibits A-I to my 10/30/09 §455 Disqualification Motion (Appx #35). Andrea confirmed by phone that she had made Chesler aware of these Demands as she receive them. Indeed, they were follow up to my 07/02/09 Application for Enforcement of Due Process Rights to Chesler (Appx #29).

(2) Other filings, like my motions, did not get docketed for extended periods and some never got set to motion protocol calendar at all. Examples of the latter were my two Rule 11 motions for sanctions; one against Robbins (which was unopposed), the other against Powers. Even when my motions did get set to calendar, it was essentially meaningless. My R.4(m) motion, filed on 04/24/09, for enlargement of time in which to perfect service (based on Michael's' refusal on 02/18/09 to authenticate my Summonses) got both docketed and set to calendar on 05/08/09. However, it was entirely disregarded by Chesler until 01/06/10, at which time he simply dismissed it as moot in light of the fact that he had dismissed all parties in his December orders. Of course he does not mention in 01/06/10 the critical fact that he based his dismissal of

defendants in 09/09/09 (in part) because they had complained about service. The following legal conclusion is inescapable: Chesler intentionally held my R.4(m) motion in abeyance since 04/24/09 so that he would have a pseudo dismissal basis predicated on service defect available to him for his 09/09/09 complaint dismissal. This datum corroborates that Chesler was on defendants' payroll *ab initio*. Once his illicit withholding of my R.4(m) motion from decision had served its illicit function for his 09/09/09 Opinion, he dismissed the document as moot -- regardless of its content and regardless of whether those defendants had a legitimate service defect. But that document surely was not moot to the 09/09/09 dismissal of complaint based on service defect. It did real legal work there. Other filed plaintiff documents were similarly meaningless. On 05/11/09, I filed a letter regarding *inter alia* the typographic error in the docket of identifying Spencer B Robbins as "Spencer A Robbins." This letter got docketed on 05/21/09. Although the middle initial was corrected on the face pages of the docket sheet, the same error is present to date in all relevant docket entries. This was an important error to correct because it makes it appear that Spencer A is filing on behalf of Spencer B and blurs the RPC conflict of interest prohibition on Robbins representing the same clients in federal court as he did in the state court matter. Cf., Rule 11 motion (Appx #18) wherein the conflict is discussed.

(3) There is also the fact that docketing clerk Donna, Chesler, and defense counsel worked as a closely-knit triangle unit through the CM/ECF system. This had several adverse consequences for Petitioner. First, defense counsel filed applications electronically but by the time I received a copy by mail the requested relief had been granted on same day as electronic

filing. Thus, even though I promptly filed Opposition by return mail or via hand-delivery, it was virtually always moot. An example of this is Powers' written request for 15-Day clerk extension and her being awarded, in blatant violation of Local Rule, (22) days. Donna would not have been able to violate Rule in this manner had Chesler not instructed her both to approve the dilatory tactic and to leave the Powers application unsigned by clerk as tactic to create a pseudo basis for asserting defensive clerk "error," should this be needed one day. This demonstrates the unity triangle between clerk, judge, and counsel. Since LRCP 6.1(b) mandates that the extension cannot exceed (15) days and because Powers was not entitled to avail herself to this extension, as she had already self-granted a 60-Day extension through a fraudulent ploy of Waivers after service of authenticated Summonses by process server on her clients, Chesler's clandestine intervention is established. Second, although I was supposed to be provided with copies by mail of all CM/ECF transactions, this occurred only for Orders and, on one occasion, the clerk never sent me a copy of the Order, as it was provided to me through E-mail by Pallotto. This, again, establishes the collusive force of inappropriate triangle. Third, there was no parity of treatment. When any defense counsel filed an application, their relief was granted the same day and in absence of due process on the issue. No application of mine was ever even acknowledged, let alone addressed or granted. No motion was adjudicated prior to the 09/09/09 case dismissal and even then, none of my arguments were addressed or evaluated. Fourth, exercising my rights to due process on lawsuit issues was "challenging" or never occurred. An example of the former was my Certification and Request for Entry of Default of GSS Inc. This was

mailed to court on 03/17/09, the document got entered into docket as received on 03/20/09, but when I phoned on 03/30/09 to confirm the actual Entry of Default, Donna had not done this. It was only after my insisting upon her doing so, and after her further private consult with Chesler about my insisting, that she performed her duty under job post and entered the Default. An example of total due process failure through scam technique occurred with Powers. She filed a dismissal motion with no Return date in the Notice of Motion. Instead, there was the notation that the motion date was "to be determined by the judge." Neither Chesler nor clerk ever notified me of it being set to calendar. In his 09/09/09 Opinion, Chesler dismissed my complaint with prejudice against the Powers defendants, knowing that I had been divested of my due process rights on that motion as a direct consequence of this judge-attorney scam tactic.

c. Counsel Conduct. Above I stated that Chesler has actively directed or mediated hostility against my case from four factions: the clerks and the three attorneys named herein as counsel of record. The conduct of each counsel includes not only bad faith or fraudulent scams crafted to divest Petitioner of my due process rights but also secret extrajudicial ex parte communications with Chesler that are easily proven. Most of these are well documented in the Appendix documents and it is inappropriate to duplicate those arguments here. Each of my motions was prepared with a detailed Table of Contents.

Spencer B Robbins Esq

15. Robbins' 03/10/09 dismissal motion is a paradigm of fraud upon a court by licensed officer of the court. That Chesler disregarded the multiple instances of fraud, perjury in sworn instrument,

impersonation of another attorney in sworn affidavit, RPC representation conflict, violation of electronic signature, forgery in presented sworn attorney Certification evidence, and arrant misrepresentation of law and fact is sufficient to meet far greater than the legal mandate for §455(a) and (b)(1) bias. That Chesler would grant this (unsigned) motion and dismiss my complaint against these (5) defendants with prejudice on the sheer basis of this singular dismissal motion is a datum in need of explanation. For such dismissal has no rational relationship to the facts and all of this fraud upon a court was brought to his attention and exposed in my 04/06/09 Opposition to 03/10/09 (Appx #16) and also in my 04/24/09 Rule 11 Sanctions motion (Appx #18, #19). Apart from the fraud, perjury, etc, in the 03/10/09 dismissal papers, there is the matter of his Notice of Motion calendaring scam. This is reviewed at p18 of Appx #33, my §455 Disqualification brief, and is also discussed in the contemporaneous documents (Appx #15, #40).

16. Finally, there is the very serious matter of Docket #27, Appx #41, an ex parte letter from Robbins to Chesler. Although it is discussed also at Page 18 of Appx #33, neither clerks in Newark, nor Chesler, nor Robbins, nor Powers, nor Pallotto would provide me with a copy of it, despite the fact that they each had it available. All of my demands were ignored (see Appx #29; and the exhibit attachments (Appx #35) to my §455 motion (Appx #33, #34). I had to get it [Dkt #27] from a different district court. There is no reasonable characterization of this letter other than it is a confirmation of agreed-upon *contractus criminis* for predetermined case outcome between Chesler and all defendants. Robbins generated this 04/29/09 letter in response to having been served with my 04/24/09 Rule 11 Sanctions motion against him. Robbins states

therein: "[R]*egardless of the outcome of the pending* [Rule 11] *motion, the plaintiff's latest request for relief would be moot after the court rules on the motion to dismiss the amended complaint.*" He then asks that he be exempted from having to respond to my Rule 11 motion by a purported "stay" on that very motion. I could stop here and be justified in obtaining all of my requested relief in §I pursuant to §455(b)(1). But wait. There's more.

17. First, there is the fact that Spencer again impersonated another attorney, his *c.*87 year old father Norman, and forged *his* signature on the letter. More salient, however, is the fact that this letter displays two fax lines. The lower one irrefragably establishes that Robbins faxed this letter to someone who then faxed it to someone else. Petitioner sees only two possibilities to explain these data.

(1) Robbins faxed it not directly to Chesler but to a "middleman" (e.g., Magistrate Shipp) at 12:08 PM on 05/01/09 from his law firm office fax machine (732-636-2171). Middleman got it around 12:55 PM or so and faxed it to Chesler. However, prior to doing so, Middleman altered the name and number of the fax machine that he used to transmit this to Chesler. He erased the name that was there and entered, "Norman Robbins." He then scrambled some numbers at random and sent the fax to Chesler. This possibility has (at least) three problems. <u>One</u> is that it is implausible that Robbins would not have Chesler's direct fax number, given that the letter establishes contract for predetermined case outcome between them. The <u>second</u> one is that it makes no sense that Middleman (especially if Shipp) would need to secrete his own fax number from Chesler, who is, after all, the intended recipient. The <u>third</u> one is that one is hard pressed to explain how and why the letter, whilst in

Chesler's possession, would be able to get entered into CM/ECF by any courthouse staffer (including Chesler) in the absence of Robbins' password. Chesler would have to know that password in order to then enter the document into CM/ECF at courthouse by using Robbins' electronic account. This is not out of the realm of possibility but it seems an awkward fit to me.

(2) The other possibility, more plausible, is that Robbins faxed it not to Middleman but directly to Chesler for approval on its content so that Robbins would not have to spend time issuing Opposition to my Rule 11 motion and thereby open himself to critical analysis in my Reply. Chesler would be the one (not Shipp) doing the scrambling of numbers on his own fax machine and the one who fraudulently punched in the letters "Norman Robbins" in order to cover the fact that he was sending it back to Robbins. After all, Chesler is a USDJ and he is engaged in impeachable crimes. So it makes sense that he would want to cover his trail. Note that the two fax lines indicate that Robbins faxed two pages to Chesler (a cover message sheet and the letter at "Page 002") but Chesler faxed either just the one page letter or his own message sheet was at Page 2. The reason why Chesler would fax it back to Robbins would be *qua* his approval on the content for Spencer to now file it electronically from his office CM/ECF account. And that is exactly what appears to have happened. This version eliminates the problem with someone other than Spencer having to use Spencer's password and electronic CM/ECF account. The only problem is that "Judge Dumb" and "Attorney Dumber" forgot about the telltale fax lines. The Circuit needs to demand from Chesler and from Robbins the producing of their complete phone and fax records for the duration of this case. The same needs to be obtained from Pallotto &

Powers. Extrajudicial collusion will be established.

18. Note that the function of the letter is what is important and not its literal content. That function had nothing to do with an actual stay being imposed on the motion, as no stay was issued or even mentioned in docket entry and because the letter was issued as a secret ex parte communication. They did not want Petitioner to have the opportunity to challenge the legal bases for imposing a stay on my motion. Once the literal meaning is off the table, one sees very plainly that the letter was really a dual-purpose legal shield, used by Chesler, to smokescreen and protect two people: Robbins and himself. Robbins did not want to waste time preparing an Opposition when a predetermined case outcome was already bought and paid-for. And Chesler needed something in the Record that would protect him from having to explain why the relief of an unopposed motion was not being granted. Both functions are well served by the letter. It is precisely the way in which this document has functioned that proves both (1) the fact of a back room deal between Chesler and Robbins for predetermined case outcome, and (2) the fact that Chesler accepted *ab initio* the roles of both commandant and aegis in this lawsuit. Ironically, the letter is a smoking gun proof of a federal judge's back room deal with Robbins in a case whose gravamen is a state judge's back room deal with Robbins. This letter constitutes proof of the validity of my underlying state case in this §1983 action.

19. The record is peppered with my demands for this document, once I learned about it from a docket sheet sent to me by Powers in response to my demands for her own ex parte documents. (See Appx #29; see also the exhibit attachments, Appx #35, to my §455 motion: Appx #33, p18, #34.) It was an egregious

violation of Canons and other judicial principles for Chesler to receive a document of substance, like this one, and not permit the plaintiff of the case to see it whilst all defense counsel had full access to it. This explains why clerks never allowed me to gain access to the E-mail CM/ECF system. My due process right to know exactly what happened in this lawsuit has been violated and covered up by the judge himself. My constitutional right to transparency, i.e., to know what happened here and who did what and for how much, has been assaulted.

Jill H Powers Esq DAG

20. As with Robbins, the conduct of Powers includes not only bad faith or fraudulent scams crafted to divest Petitioner of my due process rights but also secret extrajudicial ex parte communications with Chesler that are properly inferred. Both are well documented in the contemporaneous Appendix documents (see Petitioner's filings at Appx #20, #21, #22; #26; and Powers' filings at Appx #42, #43, #44 #45; #46, #47, #48; #49). An overview of Powers' numerous scams is summarized in my §455 Disqualification motion (Appx #33, see pp 24-26).

Virginia A Pallotto Esq

21. As with Robbins and Powers, the conduct of Pallotto includes not only bad faith or fraudulent scams crafted to divest Petitioner of my due process rights but also secret extrajudicial ex parte communications with Chesler that are properly inferred. Both are well documented in the contemporaneous Appendix documents (see Petitioner's filings at Appx #15, #27, #28; #30; and Pallotto's filings at Appx #50, #51, #52, #53, #54, #55, #57, #58). An overview of Pallotto's numerous scams is summarized in my §455 Disqualification motion

(Appx #33, see pp 27-29).

22. Note that Pallotto's affidavit (Appx #55) with purported "grounds" for lifting the default entry is comprised of sheer hearsay and unsubstantiated conclusory allegations violative of LRCP 7.2(a). It is properly rejected on this basis alone -- but there are more serious matters at issue: viz., perjury and fraud upon a federal court. There is no reason whatsoever to believe that her affidavit story (Appx #55) to lift Default has any veracity. Instead, the evidence of the case indicates that default by GSS Inc was caused by Pallotto working closely and carefully with the defendant judges in the Freehold vicinage. Gilroy was, after all, partner in crime with her client GSS Inc. Her Exhibit E court records (see Appx #56, #57) were obtained by respondent AJ Lawson from court archives and faxed to her from Freehold court. This fact alone is sufficient to demonstrate collusion between Pallotto and the judges as well as fraud upon a court in her affidavit. No cover letter was issued by her for the court records, no payment was made by her to court for those records, no subpoena was served to obtain these out of archives, these records did not come through to her from the court's business office, the records are not certified as authentic copies, and they were received by facsimile transmission to her office. Question: How did the Freehold court archives department know her fax number and that she needed these records? Pallotto was never able to produce the Ambrosia E-mail or any other document that corroborates any part of the conclusory hearsay story of her affidavit. And there is no reason to believe that it is true. For there is a much simpler explanation of her client's default: viz., the obtaining of the court records from Freehold archives simply took time. This time delay explains both Powers' three dilatory scams (60-Day Waiver, 15-Day

clerk extension, 7-Day extra bonus gift from Chesler) and the Default of her client. Both attorneys wanted to convert their R.12(b)(6) motions into R.56 motions in absence of conversion Notice so as to attain unfair advantage over their pro se adversary. Further, both attorneys needed to get the court records in order to contrive a fictional story that Chesler could use in lieu of the averments of the complaint. This fact alone proves that Petitioner did state a proper cause of action against all defendants and that my complaint was improperly dismissed

IV. ARGUMENT FOR ISSUANCE OF WRIT

There are five main bases for Writ issuance. First, Petitioner has no other avenue for relief. The case is not ripe for Appeal, as several plaintiff motions and applications remain unadjudicated and many filings were not taken into consideration when the defendant dismissals were granted. As example: Chesler dismisses GSS Inc with alleged "opportunity to amend" but the requisite factual context is already present in my 03/05/09 Addendum to Amended Complaint. Indeed, that is part of the reason that I issued it. If Chesler chooses not to see what is already before his eyes, then why should one believe that he will see these arguments if restated in a Second Amended Complaint? It is clear from his 01/06/10 Order that Chesler intends to simply ignore all extant plaintiff applications as well as my pending 10/29/09 motion for Declaratory ruling. This entails an unremediable loss of due process rights and prejudice to my case. It renders those lost rights unappealable *per se* and the content of those documents has import for the rulings that were made on other documents. If the Appellate process reviews only the documents that have been reviewed and discussed in Opinion by the

district court, then all of these applications will forever be held in abeyance.

Second, many of the defects in the proceedings of this matter cannot be remedied upon Appeal. The record is intrinsically incomplete and evidence has been intentionally suppressed in order to forestall Petitioner from having access to extrajudicial ex parte communications that have transpired between Chesler and each of the three defense counsel. Yet, these communications have legal import for the deciding of motions.

Third, Petitioner will suffer the irreparable harm of loss of redress for injuries sustained under color of state law and also in the district court as a result of Opinions that reach legal conclusions by intentionally falsifying the facts of my case, that violate and are indefensible under Circuit authority, and that deprive me of my constitutional rights. These harms are not capable of being remedied by Appeal for the reasons stated above.

Fourth, there are significant public policy concerns pertaining to the egregious manner in which this case has been handled by the USDJ Chesler. That topic is not the proper domain of an Appellate process. The integrity of the public's legal system is at stake. To withhold Circuit intervention through mandamus, knowing that there exists no remedy through Appeal, is to condone the usurpation of governmental power by a renegade immoral man who has been misplaced in society as a federal judge. See Appx #32 for a summary of the bases upon which Chesler was reversed six times in the January to August period of 2009. This shows a *pattern* of usurpation of power, likely with bribe.

Fifth, this case should not go to appeal because is a misuse of appellate resources. Chesler admits in

his Opinion that he plagiarized defense counsel's factual account presented in her brief. Such is an issue about "error" resulting from usurpation of power, not misapplication of discretion or oversight. He plagiarized her factual story in his 09/09/09. After this was exposed to him word for word, line for line, in my 10/19/09 Opposition with Cross-Motion, he continued to use the same basic story in all subsequent opinions. Why, then, reverse him through appeal? Chesler has firmly established that he has a one-track agenda. Even a cursory comparison between the factual precis set forth above of my state case (and also in my Amended) and Chesler's alleged "factual" background that he sets forth in his Opinions as basis for complaint dismissal, proves that Chesler has failed to use my complaint allegations as he is required to do under Circuit law [FRCP 12(b)(6)]. Instead, he has intentionally and fraudulently created a straw man "story" that he attributes to my complaint for sole purpose that he can have a purported ground upon which to dismiss my complaint. However, the allegations that he considers are not *my* complaint averments but only those of his self-created straw man. The R.12(b)(6) dismissal that he grants is a dismissal only of Chesler's own self-created straw man account. The bottom line is that even if Chesler then applied the law correctly (which he does not do), it is applied to a fiction that Chesler plagiarized (virtually word for word) from defense counsel Powers. To send this matter to Appeal is a frivolous waste of precious judicial resources and a burden that should not be inflicted upon Petitioner. There is nothing for the Court of Appeals to review. Commencing ones legal Opinion with defense counsel's account of the facts is both a nonstarter and a dead-end under Circuit law. Petitioner does not have to reach Chesler's

misapplications of misunderstood preclusion law. He needed to address *my* complaint averments. Period. Matter over. Chesler's Opinions bear no rational relationship to the facts averred in complaint, no rational relationship to language and logic, no rational relationship to the mandates of controlling Circuit authority.

On appeal, the raison d'être for the Appellate tribunal is either to affirm or to reverse and remand. But the raison d'être for the Mandamus tribunal *is* to do more. It is to deal with the problem of usurpation of governmental power by a renegade judge. You can put an end to the sophistry. You can send the message to all district courts that sophistry has no place in this Circuit and will not be tolerated.

Chesler suggests that my recusal motion is not timely because he alleges that it is responsive to his 09/09/09 adverse rulings. But this is yet another warping of facts. The last motion that I submitted to him was my 07/02/09 application for due process rights, followed by numerous demands for documents and due process rights. Issuing mandamus Petition was not a viable option to me at that time, as the Circuit could easily and rightly reject a Petition on sheer ground that I should have waited to hear on that motion. Petitions for Writs are not to be undertaken frivolously. There must be sound and solid grounds therefor. Up until the point of his 09/09/09 Opinion, Chesler had not shown his hand and still had the option of creating justice for me -- even in face of the record. I am a legally untrained and unguided pro se. I need to be cautious. Prior to the issuing of 09/09/09, I did not have proper legal basis upon which to petition the Third Circuit for Extraordinary Writ [for there was a pending application on the very issue and a 2 month delay in addressing this is not a sufficient ground for

mandamus]. The focus in this Petition is not on the accuracy of his comments in his Opinions or of his application of law. It is on the manner in which he reached these determinations and on the extrajudicial agenda that he has carried out in service to concordat for predetermined case outcome.

V. CONCLUSION

The within case has profound implications for the integrity of the legal system and the role of the Circuit when evidence of misuse of judicial office accompanies the basis for writ of mandamus. Petitioner has proven far more than the fact that Chesler was obligated to recuse pursuant to §455(a). There are issues here much greater than mere "*appearance* of bias." Petitioner has also proven far more than the fact that Chesler was obligated to recuse pursuant to §455(b)(1). Issues greater than just the presence of palpable actual bias and resulting actual prejudice to my case are herein demonstrated.

This case is about three sets of defendants committing the felony of bribing a federal judge to deliver predetermined case outcome to them that will exempt them from accountability under §1983 for their felonies committed under color of state law. This case is about that judge committing the impeachable crime of accepting that consideration, of delivering that predetermined case outcome, and of doing so at the expense of an innocent Plaintiffs's federal civil rights in a federal court. This judicial conduct not only violates §455(b)(4), it nullifies 28 U.S.C. 1983 in face of the fact that this statute was enacted specifically to redress the divesting of civil rights under color of authority. This case is also about a federal judge leading and directing clerks to commit crimes to defeat a Party's case, using the venerable machinery of

justice for that contemptible goal, and protecting those crimes with scam tactics and criminal cover up. It is one matter for a federal judge to commit felony from the Bench in a case pending before him. It is quite a distinct matter for him to step beyond this personal misuse his office to corrupt the youth of society who work in the people's legal system and use them as a long arm for furthering his own felonies. But clerks Michael, Donna, and Andrea are not innocent victims. They should be removed from their posts along with Chesler. For no employer can make a clerk commit crimes. They knew that what they were doing was wrong but it was their proactive choice to act as a Cheslerian strumpet anyway. They could have chosen, instead, an allegiance to Truth and to integrity and made report to Circuit.

The people of this state and of this country have the right to know if their legal system is a fraud and if relief is unavailable when the defendant malefactors are members of the legal community. The people of this country have the right to know if 28 U.S.C. 1983 is a nepotistic nullity. How pervasive in our society is the selling of predetermined case outcome by judges? How many attorneys are partners in such crimes? How far up in the hierarchy of the people's legal system does the black wall of cover up extend? At what number of cases will the Circuit's silence about Chesler's misconduct end? Why should there have to be a next case when Chesler was reversed in 2009 on such bases as:

> "The court applied the wrong standard of evidence"; "The court's [factual] statement ... was incorrect..."; "The court omitted any consideration of ..."; "The court did not give adequate consideration to...."; "A district court has a duty, to evaluate the quality of

> mitigating evidence presented to it..."; "That is but one example of the procedural errors committed by the district court..."; "The district court's reasoning is problematic...."; "The district court failed to articulate why..."; "We ...find it premature for the district court to conclude that...."; "We conclude that the district court abused its discretion..."; "The ...court's order... was based on an erroneous conclusion of law..."; "The district court applied an incorrect body of NJ law..."; "The district court applied too restrictive a standard in evaluating the admissibility of...experts...." See Appx #32.

If Chesler, after thirty-five (35) years in the profession, is disregarding facts and applying the wrong body of law or standard of evidence, then there is one and only one reason therefor. It is the sole way to smokescreen, through calculated sophistry technique, the fact that he is delivering predetermined case outcome in exchange for consideration advanced therefor. To portray such sophistry as an "error" or as an "abuse of discretion" is itself a bona fide error and one that is far worse than mere misnomer. It is an arrant insult to the intelligence and trust of Congress and the people of this country. Chesler's "errors" of law and fact are neither errors nor the result of oversight. To tolerate such sophistry by portraying it as mere error is to implicitly approve begeting more of the same. Chesler is using the people's post as would an independent contractor and has turned Justice Frankfurter's temple of justice into a farmer's market. The within case demonstrates in no uncertain terms that facts and law are literally and wholly irrelevant to case outcome. What counts is the extrajudicial back

room deal. What counts is Appx #41; i.e., Docket Item #27. And this is criminally protected from transparency by the malefactor judge himself.

Is there presently a complement of three judges in the Third Circuit who, in deciding the within Petition, will take a stand for integrity in their profession, as Kozinski did, *In re Complaint of Judicial Misconduct*, 425 F3d 1179 (9th Cir.2005), and hold Chesler accountable for his misuses of office (not merely by removing him from the within case and reversing the prejudice that he caused to my case but) by commencing impeachment proceedings against him? To fail to do so is to send two profound messages to Congress and to the people of this country: (1) That there is a thriving under-the-radar legal mafia extant in this country where case outcomes are being criminally sold by certain (state and district) judges and where the said conduct is unredressable *per se* as it is being criminally protected by higher (district and Circuit) judges at the cost of a party's civil rights; and (2) that Article VI [2] of the US Constitution and 28 U.S.C. 1983 are legal nullities because ones civil rights are, in fact, determined in the people's legal system neither by statutes enacted by Congress nor by the US Constitution -- whose mandates are each plain. They derive, rather, from a judge's arbitrary (nepotistic or personal incentive) mind set. The people of this country have the right to know: Is our legal system a fraud?

CERTIFICATION.

The undersigned certifies pursuant to 28 U.S.C. §1746 and under penalty of perjury that the foregoing is true and correct. Emphasis in quotations, if any, was added.

Elaine Karas, Petitioner

VII. Supplement to Petition (02/12/10)

In re Karas

02/12/10 SUPPLEMENT
TO 01/19/10 PETITION TO THIRD CIRCUIT
for WRIT OF MANDAMUS; Case No. 10-1233

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CERTIFICATION OF MEDICAL
FOR DELAY IN FILING SUPPLEMENT

I hereby certify that a recent fall caused both a fracture to my pelvis and a rupture to spinal disc. Since filing my Petition, I have experience extraordinary pressure on the hip flexor nerve and the S-1 nerve making me unable to move my left leg and causing me great pain. I have been bedridden, unable to sit. I had to hire someone to assist me in preparing and mailing this document.

02/12/10 Elaine Karas, Petitioner *pro se*

In re Karas

SUPPLEMENT TO 01/19/10 PETITION for WRIT OF MANDAMUS

I. THE APPEARANCE OF IMPROPRIETY v. IMPROPRIETY

My 01/19/10 Petition was hand-delivered to the Third Circuit on 01/21/10 *c.*1:00 PM and date-stamped. The courier then returned to New Jersey and immediately effected service on all interested individuals. He placed a copy into First Class mail to Chesler around 3:30 PM. He followed this with one sent electronically to Chesler at 3:43 PM via Clerk Walker's fax line but it failed to complete and he did not resend. Copies were served on each interested counsel of record via successful facsimile transmission within the quarter hour prior to 4:00 PM on 01/21/10. Facsimile transmission to Chesler was then repeated on 01/22/10 and accomplished at 1:50 PM.

Copies were provided to Chesler by mail and fax, as there is a record in Newark of my filings disappearing after they were filed in person or their never getting entered into docket as received, especially (but not limited to) when sent by mail. My envelope was addressed to Clerk's Office so that my Petition could be properly entered into case docket. I did this despite the separate standard that Chesler established for me in the vicinage. He requires that Donna forward all mail from me to him at chambers in absence of her docketing any item of mine. This discriminatory policy explains the facts that certain filings disappeared without a trace, took weeks to get docketed, or were intentionally withheld from being set to motion calendar for case duration.

It follows from the above Service facts that, in the

absence of being notified by someone other than Petitioner, Chesler would have no knowledge of my Petition on 01/21/10 or prior to 11:00 AM (at the earliest) on 01/22/10. The fax did not go through at 3:43 PM on 01/21/10 and was not again attempted until 1:50 PM on 01/22/10. It is implausible that my mail to him would be delivered to chambers from clerk's office in advance of late morning due to sorting of the day's volume by various clerks (two clerks do the initial sorting of all incoming and then forward piles to the clerk assigned to individual judges for further sorting and docketing). One can infer reasonably that Chesler did not learn of my Petition by it having been scanned into Docket by Donna. Such would be against the strict separate policy imposed by Chesler on my documents and even that would not be available to him until late morning.

Nonetheless, unbeknownst to me at the time and in act of knee-jerk reaction to having received first a phone call alert and then a copy of my mandamus Petition (likely via E-mail attachment or fax) during the period from early afternoon on 01/21/10 to early morning on 01/22/10 from someone other than Petitioner, Chesler created yet another Order in effort to forestall my due process rights to Writ remedy and to mandamus review of his conduct by Circuit panel. That Order was filed at 10:50 AM on 01/22/10 -- three hours *prior to* the send time of my Petition to Walker's fax and well prior to the time that initial mail sorting clerks could have completed their job, forwarded pile to Donna for her sorting, and then carried my Petition to chambers.

There exists only one valid legal interpretation of the precipitously-issued 01/22/10 Order. Namely: to retaliate against Petitioner for filing for Writ to remove him from case for good cause by fraudulently

altering the *interlocutory* status of my district court case to *final*, i.e., "closed," status by adjudicating one of the outstanding motions of the case. Such act serves one and only one motive: To thwart (or to attempt to thwart) mandamus review of law-violative judicial conduct at the expense of Petitioner's due process rights to seek Writ regarding the same. The said Order creates a sham basis (i.e., a "closed" case status) for the Third Circuit to now convert my mandamus Petition to the functional equivalent of a "Notice of Appeal" or for Chesler to argue that such conversion should occur. That Chesler's stratagem is fraudulent and was effected with illicit intent and personal animus is shown, first, by the fact that his previous Orders and the record of the case unequivocally demonstrate that Chesler had no intention to adjudicate that particular motion (or the others that remain pending); and second, by the fact that the creating of the Order was reactive in kind. It was issued in causal response to learning of filed mandamus Petition to remove him from the case. Chesler's stratagem functions to forestall critical review of his own criminal conduct, taken in collusion with each of the three defense counsel, and to supplant that *mandamus* review of his judicial *conduct* for goal of Writ remedy with *Appellate* review of his judicial *decisions* for mere abuse of discretion. Converting interlocutory case status to final explicitly functions to divert Circuit attention from criminal judicial *conduct* to erroneous judicial *decisions*. Review of the following matters are entirely averted by Chesler's conversion tactic: (a) his failure to recuse on good cause shown; (b) his failure to adjudicate other still outstanding applications of my case (most notably, my 07/02/09 Application for Enforcement of Due Process Rights which concerns *inter alia* defendants' withholding of

exhibits and Brief pages on motions he then decided in absence of Notice to Plaintiff of their having been set to calendar); (c) his failure to curtail fraud upon a court by attorneys; (d) his plagiarism of defense counsel's "facts" as basis for his R.12(b)(6) dismissal; (e) the documents that will prove his ex parte communications to deliver predetermined case outcome will be buried forever; and (f) his criminal collusion with each of three defense counsel to divest Petitioner of my Federal civil rights in a §1983 action for singular goal to protect the clients of each counsel from accountability for felonies under color of state law.

There are only four possible entities who could have alerted Chesler to my Petition and incited him to taking precipitous remedy against me to thwart my rights to objective mandamus review. These are: (a) the three interested defense counsel; and (b) "*someone*" (of sufficient authority) from the Third Circuit. Fax, E-mail, and phone records between 1:00 PM on 01/21/10 and 10:30 AM on 01/22/10 can definitively establish the identity of the snitch. Of the three counsel, Spencer Robbins is the most likely to panic. His license is on the line and jail time is in his future if my matter gets reviewed by an honorable trio of Third Circuit judges. Regarding the likelihood that the kibitzer was "*someone*" of the Third Circuit (who, in placing nepotism above integrity, was sua sponte throwing Chesler a lifeline out of the murky waters of judicial felony), one cannot help but take note of the following salient fact. Namely, the fact that my Petition has already met with procedural irregularity in the Third Circuit. Despite the fact that my Petition was filed in person on 01/21/10, Petitioner has yet to receive any acknowledgment thereof or paper assigning case number. This Supplement is being mailed on 02/12/10. The Third Circuit has had this

case for 23 days and neither case number nor other memo has been sent to Petitioner. When I telephoned on 02/02/10 to get an update and to inform of the need to file a Supplement due to the new Chesler Order, Clerk supervisor informed that my case had not been docketed until 01/29/10 -- the ninth day after filing -- and that this was highly unusual. Fourteen additional days have now elapsed since the alleged docketing. This kind of delay, even if ultimately found to be innocent, cannot but suggest separate standard.

II. THREE-FOLD REASON FOR A SUPPLEMENT

First, the 01/22/10 Order is attached, as it is evidence relevant to the "state of judicial mind" inquiry that must accompany a mandamus review of facts for failure to recuse pursuant to §455 motion. If that Order had not been issued, then nor would this Supplement. Given the function of the Order, Petitioner *must* issue response.

Second, the facts surrounding the issuing of the 01/22/10 Order prove that Chesler continues in his agenda to divest Petitioner of my due process rights even outside of his own court. There can be no greater evidence of failure of my Fourteenth Amendment right to an impartial judiciary. The message sent by Chesler is that not only do I fail to have due process rights in the Chesler court, I have no due process rights in *any* court of the Circuit. For Chesler controls, through secretive contacts, communications, and ploys what rights (if any) get afforded to me by his judiciary colleagues What more compelling evidence of impermissible motive on the part of a district court and §455(a)(b) violation does the Circuit need? Chesler's malevolent agenda against Petitioner is shown, first, by the function of the new Chesler Order, and second, by the clandestine manner in which

Chesler was (i) alerted to my filing for Writ by "*someone*" working in collusion with him against Petitioner and (ii) provided with an early copy of my Petition so that he could issue immediate response thereto. That agenda is also demonstrated by Chesler's knee-jerk reaction to divest me of my due process rights for Writ review (and remedy) by scam tactic to close the case. This is not mere bias. This is arrant enmity that derives from one and only one possible source: Chesler protecting his impeachable crime of having accepted bribe in my case to deliver predetermined case outcome that will serve to protect his fellow state judges and Attorney Spencer Robbins from accountability for their felonies committed under color of state law to benefit the Robbins clients. Chesler's conduct amounts to a nullification not only of 42 U.S.C. §1983 but also of the Fourteenth Amendment. Chesler has divested me of the most fundamental of civil rights: my right to be heard in a meaningful and objective manner and my right to access to courts for remedy under law for the injuries that were inflicted upon me by perpetrators of felony.

Third, the Chesler Order informs that the case is closed and, by inference, suggests that it is ripe for Appeal. Petitioner is now obliged to lay out the continuing interlocutory status of this case so that Chesler's record of due process violations is clear. Appeal is not appropriate when important filings have been ignored entirely or their content has been disregarded or falsified by judge to serve his own illicit goals.

III. PROOF of INTERLOCUTORY NATURE of CASE

The following is a complete history of the adjudication of **Petitioner's filings.**

(02/18/09) Content Totally Disregarded. First Amended Complaint. Chesler plagiarized Powers' factual background (from her 05/29/09 Dismissal motion) and used it to dismiss my case in his 09/009/09 (and repeated that basic content in his other Opinions) as if it were the averments of my complaint. The plagiarism and legal error was addressed in my 10/19/09 Opposition and Cross-Motion.

(03/05/09) Filing Totally Disregarded. Addendum to First Amended Complaint. In his 12/28/09 Opinion, Chesler dismisses my complaint against GSS Inc on the ground that my complaint fails to state a cause of action against them. But the basis of that cause of action was presented in my Addendum and I submitted two motions for leave to attach this Addendum to complaint. These were (i) my FRCP 4(m) and (ii) my Motion for Default Judgment against GSS Inc.

(03/17/09) Filing Totally Disregarded. FRCP 55(a) Certification against GSS. Although filed on 03/20/09, Clerk Donna refused to enter the Default on directive of Chesler. When Plaintiff discovered this, Default was reluctantly entered on 03/30/09.

(03/23/09) Filing Totally Disregarded. Certification to USDJ re Robbins' Calendaring Scam with request for sanction. Adversary withdrew the date when scam was exposed and he instructed the clerk to re-calendar. Judge ignored the fraud and the filing. Counsel's perjury was exposed in my 04/24/09 Motion for Sanctions.

(04/06/09) Filing Totally Disregarded. Opposition to Robbins 03/10/09 Dismissal Motion.

(04/23/09) Filing Totally Disregarded. Letter to

Deputy Clerk Walker re correction of typos in docket and demand for electronic Notices by E-mail CM/ECF.

(04/24/09) Content Totally Disregarded. Certification and Analysis; Motion for Rule 11 Sanctions Against Robbins and for Default Judgment Against his Clients with Exhibits (proving *inter alia* Robbins fraud, perjury in oath certification, impersonation of another attorney, client [RPC] conflict of interest, forgery in oath certification). Filing Totally Disregarded: Separate Brief (proving fraud upon a court on facts and on law). In his 09/09/09 Opinion, Chesler claims my Certification is "wild conjecture" and that I presented no facts or law. See the Certification's exhibits and my Brief, which contains a detailed Table of Contents and 22 pages of citations of law.

(04/24/09) Content Totally Disregarded. Motion for Rule 11 Sanctions Against Powers and for Default Judgment Against Her Clients. In his 09/09/09 Opinion, Chesler does not address my claims and he falsified both the facts and the law to allow her (i) to self-issue 60-Day Waivers, after service by process server, (ii) to fraudulently use LRCP 6.1 for a further [15-Day] extension in absence of leave, and (iii) to have a further 7-Day bonus extension in absence of leave and via ex parte communication. Chesler then calls all of these Rule violations as "reasonable under the circumstances."

(04/24/09) Filing Totally Disregarded. FRCP 4(m) Motion to Perfect Service and to Attach 03/05/09 Addendum to First Amended Complaint. In his 09/09/09 Opinion, Chesler uses failure of proper service, as asserted by defendants and in absence of any evaluation of my presented arguments, as a ground to dismiss my complaint against Robbins, the

Powers defendants, and to vacate the Default against GSS Inc. Hence, this dismissal hinges on Chesler not timely adjudicating my R.4(m) motion. He then dismisses my R.4(m) motion as moot in his 01/06/10 Order -- after it has done its legal work as ground for dismissal in his 09/09/09.

(04/24/09) Content Totally Disregarded. Motion for Default Judgment Against GSS Inc and to attach my 03/05/09 Addendum to First Amended Complaint.

(05/11/09) Filing Totally Disregarded. Opposition Certification re Powers' fraudulent LRCP 6.1 Application for extension and exposure of fraud upon a court.

(05/11/09) Filing Totally Disregarded. Plaintiff LRCP 6.1 Application for extension in time to file Reply Brief to Powers opposition to my Rule 11 motion.

(05/11/09) Filing Totally Disregarded. Plaintiff LRCP 7.2(b) Application to extend page limit to Reply brief, given Powers' fraudulent R.6.1 extension motion.

(05/11/09) Filing Totally Disregarded. Plaintiff Application to stay my 04/24/09 motion decisions pending the filing of Second Amended Complaint.

(05/11/09) Filing Totally Disregarded. Letter to Deputy Clerk Walker re correction of typos in docket and demand for electronic Notices by E-mail CM/ECF. Repeated filing of item filed on 04/23/09. Docket falsely indicates that "Spencer A Robbins" is being represented by "Spencer B Robbins" to protect Spencer B's license.

(05/11/09) Content Totally Disregarded. Plaintiff Opposition to GSS Inc's Application to file Opposition, whilst in Default and in absence of R.55(c) motion, to

my extant Motion for Default Judgment; plus Opposition to their being granted leave to file dismissal motion in advance of my filing my Second Amended Complaint.

(05/26/09) Content Totally Disregarded. Plaintiff Reply Brief to Powers' Opposition to my Rule 11 motion for Sanctions. Arguments never evaluated.

(05/28/09) Filing Totally Disregarded. Plaintiff Application for re-calendaring of the 05/22/09 GSS Inc Cross-Motion to Lift Default Entry for their failure to timely serve Plaintiff; plus Application for Order to compel GSS Inc to produce missing Brief pages and one missing exhibit prior to setting to new calendar date.

(07/02/09) Filing Totally Disregarded. Plaintiff Application for Enforcement of Due Process Rights with demand for ex parte documents. Note that in his 12/21/09 Opinion, Chesler falsely asserts that he evaluated this document. Where is that Opinion? And the focus of that demand was for ex parte documents, not Default entry.

(07/06/09) Filing Totally Disregarded. Demand for Documents Filed Ex Parte.

(07/07/09) Filing Totally Disregarded. Demand for Documents Filed Ex Parte.

(07/08/09) Filing Totally Disregarded. Demand for Documents Filed Ex Parte.

(07/09/09) Filing Totally Disregarded. Demand for Documents Filed Ex Parte and for Due Process Rights.

(07/10/09) Filing Partially Addressed. Demand for Documents Filed Ex Parte and for Due Process Rights. Clerk Walker sent demand for payment of $27.50 to release documents filed ex parte. Powers sent a

duplicate of only one page. Robbins failed to produce Dkt #27. Pallotto sent copy of Brief but not the crucial exhibit. (08/19/09) Filing Totally Disregarded. Plaintiff Demand for Documents Filed Ex Parte and for Due Process Rights. Note: on 09/11/09, Powers sent another copy of her Brief, now with no missing pages; but this postdated Chesler's 09/09/09 dismissal Order and, hence, was moot. She withheld the [missing] pages until Decision had been issued.

(10/19/09) Content and Arguments Disregarded. Plaintiff's Opposition to GSS Dismissal Motion with Cross-Motion to Vacate 09/09/09 as constitutionally infirm.

(10/29/09) Filing Totally Disregarded. Motion for Declaratory Judgment. This is the motion dismissed in 01/22/10 Order in reaction to filed mandamus Petition.

(10/30/09) Content Totally Disregarded. §455 Motion for Disqualification and Recusal. Facts and arguments were not addressed in 12/17/09 Opinion.

(11/30/09) Filing Totally Disregarded. Plaintiff's Reply Brief to GSS Inc's Opposition (to both Plaintiff's §455 Disqualification Motion and Plaintiff's Motion for Declaratory Judgment).

Counsels' Filings.

(05/29/09) Powers' Motion to Dismiss. My right to file Opposition against this motion was divested by Chesler in collusion with this attorney. Two due process problems. (1) She served a Notice of Motion with no Return date and which stated that the judge was to decide and inform on the calendaring. This never occurred. I was never noticed on this motion being heard. (2) Powers served me with a Brief that

had multiple pages faded and unreadable. I insisted on replacement prior to setting to motion calendar. She sent me a replacement of only one page on 07/10/09. She ignored my further requests for replacement of other faded pages until Chesler had dismissed her clients in his 09/09/09 Opinion. She then backdated a cover letter to 09/03/09 and mailed it to me on 09/11/09 with a complete Brief [now moot].

(05/22/09) GSS Inc's Motion to Lift Default. Pallotto did not timely serve me. I moved for re-calendaring for due process violation. This Application was ignored and I was never noticed on the setting of this to calendar. Pallotto also withheld Brief pages and one crucial exhibit that can prove that her story in affidavit for lifting Default is fraudulent and perjurious. The Brief page was provided but not the exhibit. Then in her 10/26/09 Reply to my Opposition to her dismissal motion, she asserted that she had never filed the exhibit and would not be providing it. Chesler lifted the Default in his 09/09/09 knowing that I was missing the crucial exhibit.

IV. CONCLUSION

Regarding the remarkable record shown above of Chesler's longstanding refusal to accord due process rights to Petitioner, Justice Black's words are on point:

> "Such a machine-gun repetition of a denial of constitutional rights, designed and calculated to make Petitioner' version of the evidence worthless, can no more be considered harmless than the introduction against a defendant of a coerced confession. See *Payne v Arkansas*, 356 US 560. Petitioners are entitled to a trial free from the pressure of unconstitutional

inferences." Justice Black at 26; *Chapman v California*, 386 US 18 (1967).

Regarding the validity of the content presented in my 01/19/10 Petition for removal of District Judge Chesler by Writ, Justice McKenna's words are on point:

> "The facts and reasons it states are not frivolous or fanciful, but substantial and formidable, and they have relation to the attitude of Judge [Chesler's] mind toward [the plaintiff]." *Berger v US*, 255 US 22 (1921).

Regarding the question of whether my case is proper for Appeal (instead of for Writ remedy), given that its history is replete with due process violations and documents that were either treated as not having been filed or whose filed status was acknowledged but whose content was either entirely disregarded from consideration or, alternatively, blatantly falsified by judge, Justice McKenna's words are on point:

> "[T]he tribunals of the country shall not only be impartial in the controversies submitted to them, but shall give assurance that they are impartial, free, to use the words of the section, from any "bias or prejudice" that might disturb the normal course of impartial judgment. And to accomplish this end, the section withdraws from the presiding judge a decision upon the truth of the maters alleged...[who]...shall proceed no further therein...And the reason is easy to divine. To commit to the judge a decision upon the truth of the facts gives chance for the evil against which the section is directed. <u>The remedy by appeal is inadequate</u>. It comes after the trial and, <u>if prejudice exists, it has worked its evil and a judgment of it in a</u>

> reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient." McKenna, J; *id.*, *Berger*.

Regarding the question of whether Chesler's due process violations are "harmless errors," the words of Justice Black and Justice Stewart are on point:

> "There are some constitutional rights so basic...that their infraction can never be treated as harmless error." Justice Black at 23; *id.*, *Chapman*.

> "In devising a harmless error rule for violations of Federal constitutional rights, both the Court and the dissent proceed as if the question were one of first impression. But, in a long line of cases involving a variety of constitutional claims...this Court has steadfastly rejected any notion that constitutional violations might be disregarded on the ground that they were "harmless." Illustrations of the principle are legion." Justice Stewart's concurring Opinion at 42, *id.*, *Chapman*.

Regarding the standard that the Circuit must meet in determining if Chesler's constitutional "errors" can be held as harmless, Justice Black's words are on point:

> "We therefore do no more than adhere to the meaning of our *Fahy* case [*Fahy v Connecticut*, 375 US 85] when we hold, as we now do, that before a Federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Justice Black at 24; *id.*, *Chapman*.

Regarding the issue of extrajudicial contacts between Chesler and each of three counsel, the Seventh Circuit agrees with the Third Circuit and quotes *it* as its standard. Does the Third Circuit agree with the Seventh Circuit regarding ex parte contacts?

> "The point of distinguishing between "personal knowledge" and knowledge gained in a judicial capacity is that information from the latter source enters the record and may be controverted or tested by the tools of the adversary process. Knowledge received in other ways, which can be neither accurately stated nor fully tested, is "extrajudicial." Thus information a judge learns at a workshop devoted to a subject is extrajudicial, *In re School Asbestos*, [] even though the workshop is open to other persons and evidence could be taken about the proceedings. Off-the-record briefings in chambers [or secret ex parte phone calls between judge and defense counsel], by contrast, leave no trace in the record.... What information passed to the judge and how reliable it may have been are now unknowable. This is "personal" knowledge no less than if the judge had decided to take an undercover tour of a mental institution to see how the patients were treated....Mandatory disqualification under §455(b)(1) follows. [] The discussions in chambers were calculated, material, and wholly unnecessary. Indeed, we believe that disqualification is independently required by §455(a)." *In the Matter of Edgar and Patla v KL, et al*; 93 F3d 256 (7th Cir.1996).

To Review: Each counsel had merits-related ex parte communications with Chesler. (1) Robbins: See Appx #41 (Dkt #27) and discussion at pp 17-22,

Petition. (2) Powers: How did she communicate that she needs 22 days instead of the Rule-allowed 15? How did she know that Chesler would approve her scam to self-issue [60-Day] Waivers [after service had been completed by process server]? See p 22, Petition, and my Disqualification Brief (Appx #33) at pp 24-26. (3) Pallotto: How did she get the permission to file her motions on 05/22/09 when the Order granting the same was not issued until 05/26/09? See p 22-24, Petition.

The Fourteenth Amendment is supposed to protect my right to be free in lawsuit setting of conduct by judge that is arbitrary, capricious, unauthorized by law, or in flagrant violation of clearly delineated procedure. How, then, is the judicial conduct in my state and Federal cases to be explained? Do the people's civil rights derive from Congress, their enacted laws, and the US Constitution or is the very notion of these rights hollow and illusory, being in fact determined by how a judge "feels" regarding a certain case in light of its named Parties or his back room dealings with counsel for one side? Is the judge an independent public servant whose duty is to serve rights and law (regardless of his viewpoint on the matter) or an independent contractor who manipulates rights and law as *he* sees fit? Upon receiving a Petition like Petitioner's, does the Third Circuit have duties: (a) to go beyond the deciding of its content and take steps to excise therefrom district judges who have clearly betrayed their Oath and charge in exchange for bribe; and (b) to hold attorneys accountable for their fraud upon a court -- regardless of whether the judge was a knowing and willing conspirator?

CERTIFICATION

The undersigned certifies pursuant to 28 U.S.C. §1746 and under penalty of perjury that the foregoing is true and correct. Emphasis in quotations was added.

02/12/10 Elaine Karas, Petitioner

VIII. Brief (re 01/22/10 Order) (10/29/09)

UNITED STATES DISTRICT COURT
NEWARK DISTRICT OF NEW JERSEY

	)	DOCKET # 08-5264
KARAS	)	
v	)	PLAINTIFF'S 10/29/09
ROBBINS	)	BRIEF IN SUPPORT OF MOTION
	)	FOR DECLARATORY JUDGMENT

The Sword and Shield of Stanley R Chesler's Judicial Sophistry

The Judicial Administering of a Case
(the Opinions and rulings) Holds The Equivalent of
"DNA Evidence" Proving Bribed Judge.

The People of this Country Have the Right to Know:
Are Their Courts a Fraud?

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Link v Wabash Railroad Co, 370 US 626 (1962)
Mireles v Waco, 502 US 9 (1991)
Mitchum v. Foster, 407 US 225 (1972)
Puente-Gomez v Vernon, 255 F3d 1118 (9th Cir.2001)
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Thomas & Betts Corp v Richards Manufacturing Co, WL 2329916 (07/30/09)
U.S.A. v Olhovsky, 562 F3d 530 (04/16/09)
Universal Oil Products Co v Root Refining Co, 328 US 575 (1946)

§II. THE PUZZLE WRAPPED IN A CONUNDRUM THAT IS TUCKED INSIDE THE RIDDLE SHEATHED BY "JUDICIAL INDEPENDENCE"

1. The Constitution mandates that judges be accountable under law: (emphasis added)

> "This Constitution and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound thereby...."
> US Constitution, Article 6 Clause 2

2. The Declaration of Independence mandates that judges not be damaging to the rule of law:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights [and] that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." (emphasis added) The Declaration of Independence of the United States of America (1776)

3. The Puzzle Wrapped in a Conundrum and Tucked Inside the Riddle of "Judicial Independence."

a. If the laws of logic will not permit one to derive an unlawful conclusion from lawful premises; *and*

b. If one acceptable lawful premise is that absolute judicial immunity is "justified and defined by the [honorable] functions that it protects and serves" (*Forrester v White*, 484 US 219, 227 (1988)); *and*

c. If another acceptable lawful premise is that the US Constitution mandates both:

(1) That the specific "function" that our founding forefathers wanted to protect by their notion of "judiciary independence" was only that quantum of judicial decision-making that is in accordance with the rule of law (and *not* those that issue from bribes or other personal agenda including bias); *and*

(2) That judges are bound by the supreme law of the land (presumably: (i) in their rulings, *plus* (ii) in their own conduct on Bench, *plus* (iii) in personal life); ***then***

d. Why is it, exactly, that the conclusion that the

public is seeing in the legal sector that is being derived from these acceptable and honorable premises or principles is that judges are able to garner taxpayer money for and to commit the following with impunity:

(1) Egregious (and repeated) abuses of office (as demonstrated by legally defective decisions),

(2) Flagrant and appalling repeated abuses of their judicial discretion (as proven by reversals),

(3) Brazen (and repeated) abuses of judicial decision-making that are utterly indefensible elementary misapplications of law or a flat refusal to apply correct law (as is proven by reversals), and

(4) Outright felonies from the Bench, including instrumental assault and battery (c.f., *Mireles v Waco*, 502 US 9 (1991) but see the Stevens dissent) as well as selling their judicial decisions through backdoor deals as Chesler has done in my case? These are unlawful results from lawful assumptions.

4. That "Emperor" Ain't Wearing No Clothes. Further, why is it, exactly, that "judicial immunity protecting misconduct and abuses of judicial authority" trumps the public s constitutional guarantee to an impartial trier of fact who adjudicates in accordance with law, who does not abuse his discretion, who sets aside his own biases, who does not commit mindless "misadjudications" of law or fact that even a legally untrained pro se would not make,[5] who understands that 'honorable' refers to an inner personal quality that manifests in his body of decision-making and not to a legal construct that is "designed" to cloak misconduct or to allow one to commit crimes from the

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[5] "Gee, the fact that the statute is written in the present tense or in plain language just does not seem particularly significant to me" (Stanley Chesler); or "My reason, counsel, for that decision is because I said so." (Manuel Real)

Bench with impunity; who explains his decisions with cogent reasoning and citation of authority, and who does not treat Circuit judges as an "appellate mother janitor" to clean up the debris of cognitive infelicities that never should have occurred in the first place? As case in point, see Chesler's appalling record of 2009 reversals in §V ¶22 which I quote in relevant part below. Don't try to justify these to the public with a "judicial independence" argument. The people ain't gonna buy it. *That* "emperor" ain't wearin' no clothes. Just reflect on the *legal bases* given by the Circuit for the said reversals and then explain to the public why their taxes are being used to support such sophistry and why Circuit judges do not consider this man a blight in the people's temple of justice and an affront to their own honorable practices of law.

* "The District Court believed that the fact that 'the statute is written in the present tense in not particularly significant'...we disagree. The use of the present tense in 8 USC §1154(b)...makes plain that the fact in the petition -- including the alien's spousal status -- must be true at the time USCIS decides the petition." [duh!]
* "The court's [factual] statement ... was incorrect..."
* "The court omitted any consideration of ..."
* "The court did not offer any explanation for accepting government's three-page expert report and ignoring substantial evidence derived from contrary expert opinions of psychologists who actually interviewed defendant."
* "A sentencing court has a duty to evaluate the quality of mitigating evidence presented to it."
* "The district court concluded that "draconian" punishment was warranted with only minimal consideration of substantial evidence to the

contrary."

* "The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decision-making authority...."
* "The court did not give adequate consideration to...."
* "A district court has a duty, to evaluate the quality of mitigating evidence presented to it."
* "That is **but one** example of the procedural errors committed by the district court." (emphasis added)
* "The New Jersey court's conclusion to the contrary is an unreasonable application of clearly established Supreme Court precedent."
* "Rule 20's use of the term "persons" is clear and unambiguous ... the District Court's reliance on ... extrinsic considerations rather than the plain language of Rule 20 was error."
* "The District Court's reasoning is problematic ..."
* "The District Court failed to articulate why..."
* "We likewise find it premature for the District Court to conclude that...."
* "We conclude that the District Court abused its discretion..."
* "The District Court's order...was based on an erroneous conclusion of law..."
* "The District Court applied an incorrect body of New Jersey law..."
* "The District Court applied too restrictive a standard in evaluating the admissibility of...experts..."

5. One is unnerved in contemplating the number of Chesler's cases that did not find their way to justice in Appeal solely due to the fact that the losing party could not endure the enormous costs and hardships

caused thereby or due to their concluding that fighting for justice is a lost cause. For even if the Circuit reverses they will only remand it back to Chesler on purported "duty" of "deference to a district court" for more of the same kind of abuse. Apparently *that* collegial "duty" trumps any "duty" to protect the public from a second cut from the same sword of sophistry at the hands of the same sophist. Many parties fail to appeal for sole reason that it is a lesser evil to acquiesce to judicial crime from Bench in their case and cut ones losses than it is to fight the unassailable fact that our legal system is wrongly setup to protect the judicial wrongdoer instead of his victim. For proof of the fact of nepotism trumping a victim's civil rights one need note what Circuit colleagues did in the case of Manuel Real (§IV ¶22) and the fact that 88% of misconduct cases are dismissed out-of-hand by Circuit CJ because the complaint goes to the content of the Opinion or other judicial administering of the case. "Almost all complaints are dismissed by the chief judge; 88% of the reasons given for dismissal are that the complaint relates to the merits of a proceeding or is unsubstantiated." *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice*" (September 2006), P 6.

6. In 2004 and in response to criticism raised by Congress about whether the Federal judiciary is engaging in institutional favoritism in implementing the 1980 Act (i.e., "[A] system that relies for investigation solely upon judges themselves risks a kind of undue 'guild favoritism'..." *id.*, at 1), CJ Rehnquist created a Study committee, led by Justice Breyer, to examine the way in which the 1980 Judicial Conduct and Disability Act was being implemented by the Judicial Disciplining Councils. In September 2006,

the findings were presented. The Study reached two major conclusions. First, they concluded that there was an "error" rate (i.e., the CJs did *not* correctly implement the mandates of the 1980 Act) of *c.*30% in the high visibility cases (the most egregious instances of judicial misconduct) (*id.*, at 5, 7). The Committee concluded that this was "far too high" (*id.*, at 5) because "it could lead the public to question the Act's effectiveness and it may discourage the filing of legitimate complaints" (*id.*, at 7). Although it was not specifically stated in the Report, from this datum alone the presence of institutional favoritism in the Councils can be properly inferred. Second, they concluded that there exists no "problem-riddled 'iceberg' lurking below the 'high visibility' surface" (*id.*, at 5) where 'problematic' refers to the CJ's "failure to undertake an adequate inquiry into the complaint before dismissing it" (*id.*, at 7). But if 88% of the misconduct cases received are being dismissed out-of-hand because the misconduct complaint relates to the judicial administering of a case (*id.*, at 6), i.e., merits-related decisions; or because the CJ fails to differentiate complaints that, though merits-related, are not attacking the legal correctness of the ruling *per se* but, rather, the manner in which that decision was obtained; or because Complainant is not allowed access to the tools that could prove ex parte contact (like chambers phone and fax records); and, moreover, if the administering of the case is the sole location wherein noxious extrajudicial factor (bribe) can manifest and be substantiated, then that 88% pile of complaints that got swept off the CJ's desk *ab initio* looks like substantial "iceberg" in the eyes of the public. Plaintiff, for one, would like to see a judge like Alex Kozinski go through the 88% pile of cases and their corresponding Opinions that have been placed into

trash by a Circuit CJ and keep a tally on: (a) the number of complaints that are alleging that the judge jeopardized their case or their civil rights by failing to adhere to the law or by engaging in ex parte or by undue bias; and (b) the number of corresponding cases that do, in fact, "give[] rise to the suspicion that he acted for personal and improper reasons rather than according to the rule of law" (c.f., Kozinski quote at end of ¶22) Now, *those* statistics would be a better gauge of the scope of judicial misconduct in this country and the number of judges who are exploiting their offices as independent contractors for personal gain. And those statistics would *ipso facto* also be a more accurate assessment of institutional favoritism. But Appeals need also to be reviewed. For numerous cases are affirmed, despite the fact that appellate judges agree that they would have decided the case otherwise, on sole ground of deference to colleague.

7. When a judge with 35 years of experience makes "errors" in the legal adjudicating of cases that even an untrained pro se would not make, then there is a calculated reason therefor whose nature thereof disqualifies him from continuing to hold the people's job post. And yet he does. If any other public servant position that also enjoys immunity (e.g., a legislator) did what Chesler has done, the result would be impeachment with a mandatory criminal prosecution and jail. If accountants or college professors or butchers or computer manufacturers caused in their professional capacities as many "plain" errors and "abuses of discretion" errors as Chesler creates in his judicial capacity, then these professionals would be out of business. They would be held liable for fraud or conversion or malpractice or the like and laws would be created where possible to protect the public. How many "plain" errors or "abuses of discretion" errors

would a chef have to commit before his restaurant is shut down? What similar protection does the public have from Chesler? How many "plain" errors or "abuses of discretion" errors does a judge have to commit before the Circuit exercises its inherent power to restore integrity to its district courts? The public is being fed poison judicial "food." Innocent people are being harmed by judicial "errors" in the tens or hundreds of thousands of dollars by being forced to Appeal on irresponsible judicial decision-making or plain sophistry contrived to smokescreen thrown case. Where is the public's protection? Is one really to believe that Circuit judges do not realize what is really going on when they reverse calculated sophistry? Is one really to believe that the Circuit judges who reversed Chesler six times this year really did not suspect that Chesler is throwing cases? If the Circuit had imposed *proper* accountability on Chesler in the six cases reversed this year, then he would not have been so willing to take bribe in exchange for predetermined case outcome in my case. Where there is no accountability under law there is lawlessness. Why? Because it pays a fat bribe unlike doing the right thing, unlike acting in accordance with Oath, unlike fulfilling the trust and charge of Congress.

8. Judges know how to do their job correctly and have done so correctly in the past. *Ergo*, their reckless deviations from law, fact, and sound reasoning are in want of explanation. The public simply does not believe that they are instances of "oops" error. So, why are they treated by the Circuit as an instance of the innocuous? This flurry of 2009 reversals of Chesler's legal decisions is evidentiary of the fact: (1) that Chesler is selling case outcomes for payola there as he indisputably has done in my case; or (2) that Chesler

is intellectually unqualified to do the analytical legal work of his job post impartially as is mandated by the post. There is no middle ground here. Noxious extrajudicial factor begets noxious judicial decision-making. The existence of noxious judicial factor in the judicial administering of a case is evidentiary of a failure in judicial impartiality and is probative of noxious extrajudicial factor at work in the media of the lawsuit. Truth needs neither disguise nor the defiling of the machinery of justice; hence, when the latter is present in a lawsuit, there is one and only one reason therefor: viz., abdication of the judicial function. Betrayal of Oath. Treason. High crime.

> "Judges abuse the power of the judicial office when they abbreviate or change critical aspects of the adversary process in ways that run counter to the scheme established by relevant constitutional and statutory law" (*Judicial Conduct and Ethics* 3E (2000), Shaman, Lubert, Alfini; Page 50).
>
> "[C]ourts seem to agree that legal error is egregious when judges deny individuals their basic or fundamental procedural rights." [*id.*, Page 37]

9. A trilogy of pending motions have been filed by Plaintiff pertaining to Chesler's 09/08/09 Opinion. In addition to the within, there is my 10/19/09 Opposition with Cross-Motion for Vacation of the 09/08/09 Order (and Stay on the dismissal motion of GSS Inc) and my 10/30/09 Motion for Disqualification of Chesler For Cause. Their content is incorporated herein by reference. These three papers prove:

(1) that "justice" in the people's legal system has become a commodity that is being sold out of the "back door" of chambers to parties who are the perpetrators of felony;

(2) that Chesler is one of the said bribed sellers of predetermined case outcome;
(3) that the judicial administering of a case (the decisions) holds the equivalent of "DNA evidence" proving bribed judge; and
(4) that the only difference between many judges in 2009 and the ones in 1871 (against whom §1983 was enacted) is that white hoods have now been replaced by black robes and that the men who banded together and traveled by horses to commit egregious civil rights violations on innocents has been supplanted by travel via phone lines. The people of this country have the right to know: Are their courts a fraud?

§III. PRELIMINARY STATEMENT

1. The Raison d'Être of §1983. "Section 1983 was... §1 of the Civil Rights Act of 1871...."

> "As Representative Lowe stated, the 'records of the (state) tribunals are searched in vain for evidence of effective redress of federally secured rights... What less than this (the Civil Rights Act of 1871) will afford an adequate remedy? The Federal government cannot serve a writ of mandamus upon state Executives or upon state courts to compel them to protect the rights, privileges and immunities of citizens...Hence this bill throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired.... 'Sheriffs, having eyes to see, see not; *judges, having ears to hear, hear not*; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be' accomplices... (All) the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared

> detection. Among the most dangerous things an injured party can do is appeal to justice'...The very purpose of §1983 was to interpose the Federal courts between the States and the people, as guardians of the people's Federal rights to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'" *Mitchum v Foster*, 407 US 225 (1972) (parenthetical original, italic added).

2. The Naiveté of People to the Matter of Wrongdoing by Judges.

Mr Lowe was such a good person in his heart that, *in 1871*, he was both naive in his conceptualization of the problem before him and unduly optimistic about the nature of his fellow man. He could not bring himself even to imagine, let alone to contemplate, that there might exist, *in 2009*, men like Stanley R Chesler who would get elevated by their social connections, i.e., their legal "favors" or money advanced to unprincipled politicians of their pet political party, to the highly paid and fiduciary position of Federal guardian of the people's constitutional rights and then use his *Federal* robe as a KKK hood -- in identical manner as the state judges against whom Lowe was enacting that public-protecting legislation. Our founding forefathers were equally naive and idealistic. They were so absorbed in trying to protect the integrity of "judicial decision-making in accordance with law" from extra-legal influences that they, too, were unduly optimistic about the nature of their fellow man. They did not give adequate consideration to the need for judicial accountability or the problem that occurs when a Federal judge transmutes law into sophistry secondary to bribe and there is no expedient provision in the Constitution for excising such ignominious strumpet from the

temple of justice. They lived in a time when a person's word meant something; hence, they just presumed that a proper Oath of Office would entail honorable conduct. Representative Lowe and our founding forefathers are not alone in their naiveté and idealism.

> "The case at bar involves a scandal bigger and more profound than Watergate (see *First Amended*, P19, L356ff). It shocks the conscience, desecrates the integrity of our legal system, and constitutes a fraud upon our Supreme Court.[] This case has the potential make a profound difference in how state judges and attorneys and criminally-minded residents like Ralph and Regina Pietersen will operate henceforth by impacting in a swift and decisive manner each of the defendants hereof.[] [I have] extended [my] still bleeding hand to Federal court through filed action.[] I have carried the scepters of Truth and legal integrity since the lower court matter commenced in 2003. With this motion, I entrust them to the very capable hands of this Federal court." (Docket #24: 04/24/09 Plaintiff Motion for Sanctions against the Robbins defendants.)

3. Warning to Chesler: Section 1983 is a Plaintiff in my Complaint. I also wrote in that motion:

> "Federal law and, in particular, §1983 law, is a plaintiff in this case to be vindicated or besmirched. Will the body of jurisprudence be enforced and held sacred or will *Karas v Robbins* case law be reached that has the untoward result that §1983 has applicability only for corrupt cops but not for corrupt state judges or lawyers. With what fervor will the Chesler court protect its own integrity and the integrity of its Circuit law? What message will

> be sent? [T]his case has the potential to be of momentous import to all residents of this state, even those who are still in diapers. This case has the opportunity to change how state court judges regard the law and their Oath, how licensed attorneys will respond to client requests to deviate from law, and how private citizens will view their responsibilities under law. This case has the opportunity to have impact beyond the resolution of the dispute between parties and create a better society." (*ibid.*)

Such was the 04/24/09 opportunity presented to Chesler by this *very* naive Plaintiff.

4. Why are the Judiciary Defendants Fearless to Running Scams in Federal Court?

"Remarkably, these five judges are so obdurate in their operating from a scam mind set against me and so confident of being protected against consequences for their noncompliance with law that they stand fearless and without trepidation in the penumbra of the inherent authority of a USDC. How is their fearlessness to be explained? Within the span of 20 days of Summons by Federal court, these five state court judges have thumbed their nose at USDJ Chesler, have thumbed their nose at the mandates of Federal law, and have sent the message to Chesler that they intend to do things in *his* court according to their own whims, timetable, and scam tactics. These judges are undaunted by the ascendancy of a Federal court. How is that brazen effrontery to be explained? Why do they believe that they can continue to run their *ad hoc* criminal scams *qua* business as usual and with impunity in the house of the Federal government? Is one to believe that they do not know the raison

d'être of 42 USC 1983?" (*ibid.*)

5. Why are the Robbins Defendants Fearless to Running Scams in Federal Court?

"Robbins, like the five judges, assumes that this court is either so stupid or so corrupt that Chesler either cannot tell or does not care about the difference between certified percipient fact and perjured hearsay in sworn Certification. Robbins assumes that this court is either so illiterate on case law or so indolent that Chesler will not be able to or care to distinguish when a given citation or allegation of law is so improper or so misguided to the legal point in contention that the only reasonable legal interpretation of the same is that it is present in the paper for sole purpose to improperly influence the trier of fact to faulty conclusion and, ironically, at the expense of his opponent's *civil rights* in a *civil rights* lawsuit. Robbins assumes that this Federal court is so morally bankrupt that Chesler would prefer to turn a blind eye to the Robbins wrongdoing rather than to assert the inherent power of his judiciary against a "fellow member of the Bar" for perpetrating fraud upon his court. Robbins presumes that this court is so deficient in backbone that cover up for RPC violations, cover up for perjury in sworn written oath instrument, cover up for falsifying law, and cover up for perpetrating fraudulent scams both on his opponent and on the Chesler court itself all will obtain. But notice that he not only presumes that these characteristics will be present in the USDJ to motivate outcome, he *expects* them. In short, Spencer Robbins expects (and relies on the fact) that this court will violate its own Canons and become an abettor of the iniquity set forth in his 03/10/09 and his 03/24/09. Question: Why is Spencer B Robbins Esq (like the five

judges) literally fearless as to any consequences for running scams whose sole goal is to defile the impartial administering of justice in the Chesler court?" (*ibid.*, all markings in original.)

6. Chesler's Three Options. Assuming, arguendo, that a fictitious criminal, let's call him, "Gilrat," wants to bribe a Federal judge (a felony) to render predetermined case outcome in his favor so that he will not be held accountable under law for his own felonies. At such time that defendant "Gilrat" illicitly makes contact with a judge for that purpose, that Federal judge is faced with three options.

a. The Path of Integrity. The judge can expose the affront to his integrity by that defendant, sanction "Gilrat," and let the parties know in no uncertain terms that this judge expects and will maintain strict compliance with FRCP, the law, his Oath of office, Canons, and the attorney RPC.

b. The Path of Corruption. The judge can accept the overture and negotiate the amount of his bribe, the specific manner in which the desired case outcome will be achieved for that particular amount, and additional amounts should the situation require more of him than is presently expected. Alternatively, the judge can strike a quid pro quo deal with the criminal "Gilrat" by saying: I make the lawsuit against you go away via dismissal and you make my traffic ticket disappear when that happens, or you give me insider stock information, or you hire my son at a fat salary with your company, etc.

c. A Middle Ground. The judge can acknowledge the personal conflict that might exist if, as in the within action, the said bribing defendant is a fellow ABA judge and respond as follows:

"The fact that you have approached me ex parte

asking for preferential treatment simpliciter entails that the averments of the complaint are true and some of these are clearly indictable offenses. That being the case, you are to settle this matter with the plaintiff and make full compensation for your wrongful conduct. The entire purpose of §1983 is to provide redress for innocent victims of unlawful conduct of state officials like you. And I will hold you accountable to the full force of Federal law."

7. The Very Viable and Telling Fourth Possibility. The above scenario assumes that it was a state judge defendant who initiated ex parte contact with Federal judge. That assumption is presently without factual support. Instead, there do exist multiple facts and logical principles that support the legal conclusion that Chesler (or Magistrate Shipp acting at Chesler's directive) was the one who initiated ex parte contact with a state judge named as a defendant. The facts of the instant case presently confer probability on the legal conclusion that the initial illicit contact between *this* Federal judge and a defendant state judge, which one knows for certain *did* occur, appears to have been initiated *sua sponte* by Chesler (and *not* the other way around). The only said purpose would be to inform the defendant judges of the filing of my 10/20/09 complaint against them and to discuss the details of an illicit deal for predetermined case outcome. When foxes are in charge of the hen house and a chicken yard "mishap" is at issue, then even adjudicator foxes protect yard foxes. So much for passing and entrusting "the scepters of Truth and legal integrity" (*loc.cit.*, at end of ¶22 *supra*) to the hands of the *Chesler* court.

§IV. LEGAL ARGUMENT

THE NOXIOUS JUDICIAL IS EVIDENTIARY AND PROBATIVE OF THE NOXIOUS EXTRAJUDICIAL

1 Judges Follow Law Unless Provided With Incentive to Deviate Therefrom

1.1 One can assume as fact that Federal judges who have neither a perky pet issue axe to grind nor personal interest to be achieved from the outcome of a randomly assigned case will tend to issue rulings that are in accordance with FRCP and law. This is a reasonable assumption. It is mandated by Oath and the duties of the job post for which that person has long trained in the field of law. There exists no reason for any judge to not do so. It is the deviation from law that is the anonymously and, accordingly, it is only and specifically conduct showing a failure to adhere faithfully to the law that is in need of explanation, a weighty explanation. There would, then, have to be some intervening cause of substantial proportion to account for deviation from law in its normal course, e.g., a bribing party. And, ceteris paribus, it is solely when a judge has some compelling reason to deviate from strict application of law that he violates the rules of procedure, controlling authority, and Oath of Office. Otherwise, the default is to administer the case compliantly with law to outcome that is itself mandated by law.

2 Substantial Deviations From Law are Neither Fluke Nor Discretion

2.1 When a judge like Stanley R Chesler deviates from procedure or precedent, he knows what he is doing. It is no accident. It is the result of calculated proactive choice. There is a compelling reason for this

legal conclusion. He has been in the business for about 35 years. Chesler was an assistant DA for 6 years, a Federal prosecutor for 7, a magistrate for 15, and has been a USDJ for *c.*7 years. Further, if any judge is not certain about how a novel aspect of a case should be adjudicated under law, he knows how to obtain this information. He has a personal law clerk who will do the research for him *for free.* He has guidance available to him from more experienced colleagues *for free.* There is literally no legitimate excuse for any judge not delivering judicially in a case strictly according to law. There are only illegitimate bases therefor. If Circuit judges can determine that an Opinion is not Rule-compliant or in accord with precedent or that it wrongfully excludes evidence or applies wrong body of law, then so can that district court that got overturned. If Circuit judges render the determination that a judge has abuse his discretion, then this will not be "news" to that district court upon receiving the Circuit order stating so. That judge already knows that he did so. All judges know what the law mandates on civil rights, on procedure, on evidence. They know how to ensure that parties get accorded their full rights under law. They know proper procedure when an attorney commits perjury or files an ex parte document. Hence, any deviations from law or procedure are calculated decisions. Indeed, it is only in virtue of a judge knowing what is required under law that he can manipulate the machinery of the people's system for illicit ends, i.e., to secrete his crime of throwing the case via veil of sophistry.

3 <u>Judges Do Not Throw Cases For Free; Predetermined Case Outcome is Always a Quid Pro Quo Arrangement</u>

3.1 It is an indictable offense for anyone to bribe a

public servant. It is an impeachable offence, a "high crime," for any judge to accept bribe in exchange for delivering a predetermined case outcome (which, by definition, is an outcome not warranted under facts or law). Judges, like ordinary people, do not commit crimes on behalf of others for free, given no benefit thereof to oneself. Delivering a predetermined case outcome to one party via that judge acting counter to Oath and law and, moreover, by himself defiling the Federal machinery of justice is a valuable commodity. It requires his proactive and ongoing administering of the case into *contractus criminis* outcome. It involves (some) risk for the judge. It is thus a commodity for which a guilty party will offer consideration.

3.2 Judges are very well aware of the power that they wield. Judges know that their decisions can move thousands (even millions) of dollars from the party at his left to the party at his right. And parties know that it will tend to stick there due to the inherent nature of appeals. They are pricey and time consuming. And appellate judicial deference to a colleague entails remand back to the same district judge (who could not get it right on the first time) for naught but a second force-feeding of sophistry. It defies common sense that any judge would give that power away for free. Even the notion of a judge throwing cases for free is incoherent, as such would be a defining characteristic of mental disability.

3.3 Note that just because a man puts on a dress he does not thereby become a woman. More is required. Just because an attorney (whose professional life, in many cases, has been focused on how to cheat the legal system for his clients) puts on a judicial robe he does not thereby become honorable. More is required. That something more is what is evidenced by the body of that man's decision-making while donned in robe. And

although there will exist for any judge adjudications of law or fact that do involve discretionary decision-making, there is no such thing in law as a "discretionary" awarding of FRCP, a "discretionary" interpretation of the plain meaning of a statute, a "discretionary" right to receive evidence in discovery. Every party gets these *stricti juris*. And all discretionary adjudications are themselves to be in accordance with precedent and sound reasoning governed by the laws of logic.

4 Logical Principle #1: Truth Needs No Disguise

4.1 It is axiomatic that one will "cheat" in a lawsuit only on condition that one knows that one does not have the facts to secure a win by a correct application of the Rules. For factual allegations have a truth value that is established by documentary and other evidence. And the *machinery of justice* (i.e., FRCP, Rules of Evidence, judicial impartiality, discovery, motions, affidavits, and briefs containing arguments that are grounded in accurate fact, valid logic, and correct citations of controlling authority) is oriented to bringing forth a truth value that is itself accurate to the facts unearthed by this legal machinery. It follows, then, that if the factual allegations of Plaintiff's First Amended are false, then my opponent judges would not want to cheat. They would not want to tamper with the "proper functioning" aspect of the truth-establishing feature of the said legal machinery. For they would want to be able to use it to establish, by sound application of legal principles, that state of affairs that they believe will demonstrate falsity in complaint averment. This is achieved *very* easily via normal lawsuit evidentiary and procedural methods. No one in their right mind, let alone a defendant who happens also to be a state judge by profession, would

want to tinker with the legal machinery that presumably will vindicate him by a legally sound method. It follows that if my complaint allegations are false, then there exists: (i) neither need nor motive to tamper with proper due process or the proper functioning of any aspect of the machinery of justice; (ii) compelling motivation to insist that these tools take their strict lawful course and form; and (iii) neither need nor motive for any of the herein defendants to cheat in this lawsuit by influencing the judge *or* by defiling the machinery of justice so as to obtain a case outcome that would not be warranted by (and that could not otherwise have been obtained by) properly functioning tools of justice. *Ergo*, there is a profound reason if such noxious characteristics are present.

5 Cheating in a Lawsuit Legally Entails Guilt

5.1 Assuming, arguendo, that a defendant party (directly or through his attorney) attempts to bribe or otherwise illicitly influence a judge. Such conduct is for sole goal to cause that trier of fact to deviate from his solemn duty under law and Oath to impartially deliver the rules of civil procedure to parties and to faithfully apply the law. Any bribing party is, by definition, one who wants a particular outcome to be artificially imposed on a case that could not otherwise be achieved by the normal administering of justice, i.e., if the judge were to act in accordance with law. It follows, then, that this very act of pestiferous extrajudicial influence on public servant (itself a felony), entails that the defendant knows that he cannot win on the facts or on the law. Such defendant knows that he is guilty of the charges of the complaint; so, he cheats by forcing a win in his favor through bribe influence on trier of fact. Hence, cheating in a lawsuit by counsel is simpliciter conclusively probative

of the guilt of the cheating party of that lawsuit. For a person would tamper with the machinery of justice -- which is designed to bring forth truth -- only on condition that one does not want truth to be brought forth. The sole reason why any party would want to prevent ones adversary from having access to proper functioning truth-revealing legal machinery is because that party is motivated to block truth. And the sole reason why any party would want to block truth, i.e., to thwart it from manifesting in the "temple of justice," (c.f., Justice Frankfurter, *Universal Oil Products Co v Root Refining Co*, 328 US 575 (1946)) is because one is guilty of the averments of the complaint. "Truth needs no disguise" (c.f., Justice Hugo Black, *Hazel-Atlas Glass Co v Hartford-Empire Co*, 322 US 238, 247 (1944); see also Circuit Judge Hawkins, *Dixon v Commissioner of Internal Revenue*, 316 F3d 1041 (9th Cir.2003).

6 The Diacritical Misanalogy Between Judge and Referee

6.1 Cheating in a lawsuit (like cheating in any game) involves twisting, distorting, bending, perverting, omitting, manipulating, or otherwise defiling the integrity of Rules that were independently established for the administering of justice (or the playing of the game). The raison d'être for a judge in a lawsuit is to ensure that each party obeys the Rules and does not prejudice his adversary's rights by circumventing procedure in zeal to win. The Rules are there not only to preserve a level playing field. They are there to give birth to merit and to truth. They are there to give birth to justice under law.

6.2 The judge is in *some* sense like a referee in that in *some* sense he "is there to call the balls and strikes." But this characterization by CJ John Roberts is inept. After every NFL football game (which is a reasonable

analog of Federal court), every referee's calls are reviewed on tape. These "adjudicators" are then ranked according to whether they did, in fact, make correct calls. Only the referees receiving the highest scores are then allowed to judge the games in the playoffs. And critical evaluations of their decisions are always ongoing. One bad call and you're out. For case at point see Ed Hochuli's call of the 09/14/08 Chargers-Broncos game in Denver that cost him being selected to referee at the playoffs. Fans, on the other hand, also want their team to win on merit -- not fluke. When officials ruled (in the 12/19/98 Jets-Seahawks 32-31 game) that Vinny Testaverde had scored on a fourth-down, 5-yard quarterback sneak with 20 seconds to go -- even though he never made it into the end zone -- Jets fans called it a "good" bad call and Coach Bill Parcells attributed the win to divine intervention, not merit.

6.3 None of this is even remotely true in the field of law. Attorneys are neither considered for nor appointed to Federal Bench based on their scorecard in delivering justice accurate to the law. Indeed, in our socicty even the idea of an attorney being truthful is oxymoronic. Even more important is the fact that once that appointment is made, all evaluative inquiry ends. No scorecard will be kept by the Circuit of how often a given district judge is reversed for utterly indefensible elementary "mistakes" in his rulings *or* his flagrant abuses of discretion *or* his being disqualified from a case through mandamus *or* for conduct that in any other job post would be sufficient to terminate the appointment forthwith. Indeed, a judicial appointment is the only job post in this country where an employee can fail to perform the duties of that position plus use that platform to commit felony and not get fired. A judge can get reversed regularly (Chesler); get disqualified by mandamus repeatedly (Manuel Real);

cause enormous financial losses and other hardships to innocent parties by his own perverse and unlawful manipulations of the machinery of the *people's* legal system for licentious gain (Manuel Real) or for financial gain (Gilroy); intentionally plan, set up, and defraud an innocent citizen of hundreds of thousands of dollars pursuant to a backdoor deal with a counsel (Gilroy); divest a citizen of future meaningful access to the courts by simple phone call to colleague with instruction for malicious administering of the case (Gilroy to Locascio, Lawson, Serpentelli, Peterson and then later to Chesler and Shipp); seek *and gain* criminal support for and cover up of his felonies and other disreputable agenda from his fellow judges (Manuel Real, Gilroy); issue instruction for loan shark tactic (trespass with vandalism that slashed all the wires under the hood of my car and totaled it) to induce acquiescence from a victim of his scams (Gilroy); order that an innocent person be assaulted and battered (*Mireles*); engage in surly and case-prejudicial querulousness from the Bench in front of a jury and, as long as he does not leave his DNA on a bleeding victim in chambers who is still capable of talking, that judge will not receive even raised eyebrow from (at minimum) 90% of the ten Circuit colleagues reviewing the misconduct complaint filed against him, let alone lose his job for failing to deliver on the duties of his job post or his Oath. For case at point, see (i) *In re Complaint of Judicial Misconduct*, 425 F3d 1179 (9th Cir.2005); (ii) the utterly scandalous longtime record of Manuel Real; (iii) the reprehensible record of judicial felony in my state matter; and (iv) the contemptible record of civil rights violations by Chesler in the within case for sole goal to criminally cover up felony by judge colleagues. And the utterly shocking thing is that all of this sordid conduct is

going to be waived away by the Circuit on pretext of the allegedly honorable principle of independence. Question: Independent *for what*? To commit crimes from Bench with impunity? To exploit the innocent public as prey for personal gain? To convert the people's temple of justice into a farmer's market run by a legal mafia?

6.4 Circuit judges, like Margaret McKeown, who have distinguished themselves by decisions that show great integrity and legal competence (as she did in *Puente-Gomez v Vernon*, 255 F3d 1118 (9th Cir.2001) and in *Fink v Gomez*, 239 F3d 989 (9th Cir.2001)) fold like a house of cards when it comes to adjudicating the wrongdoing of a colleague (as she did in *In re Complaint of Judicial Misconduct*, *op.cit.*). When given the opportunity to join the Kozinski dissent, McKeown chose instead to "anonymously" join the majority in whitewash of Manuel Real's crimes from the Bench and be counted only as a head, not as a voice. The result in that eye-opening case was a 90% nepotistic uniting that overrode Kozinski, who stood alone for legal integrity and accountability in a field of ten circuit and district colleagues. McKeown wrote in *Fink*: "Therefore, we hold that an attorney's reckless misstatements of law and fact, when coupled with an improper purpose, such as an attempt to influence or manipulate proceedings in one case in order to gain tactical advantage in another case, are sanctionable under a court's inherent power." The public wants to know, Judge McKeown: Why does this same principle *not* apply to the conduct of Manuel Real? Why is it that you are willing to take a stand for legal integrity when ruling that an attorney cannot engage in such conduct but not when a judge does the equivalent of that same proscribed conduct -- or even more reprehensible deeds from the Bench? Why, exactly, is

it OK for Manuel Real to engage in "reckless misstatements of law and fact, [that are] coupled with an improper purpose, such as [his] attempt to influence or manipulate proceedings in [the bankruptcy] case in order to gain tactical advantage in [the eviction proceeding] case [for personal licentious gain]"? Is not the conduct of Manuel Real "sanctionable under a [CJ's] inherent power" for bringing disgrace to the Circuit? Notably, the *Mireles* case (*op.cit.)* proves that this nepotistic attitude of palliating colleague wrongdoing -- in lieu of imposing the kind of accountability that is imposed on NFL referees -- is not confined to district and circuit courts. That topic was so incendiary that the majority in *Mireles*, in knee jerk-like fashion, issued a rare and exceptional disposition of the matter via summary reversal of the Ninth Circuit (that called it right) in the absence of any briefing of the issues and in the face of puissant dissents by Stevens, Scalia, and Kennedy!

6.5 Remarkable is the fact that 88% of misconduct complaints will be simply dismissed out-of-hand upon receipt thereof on a false exclusion theory because Circuit CJ refuses to validate the legally trenchant causal relationship between judicial misconduct and the sophistry in the Opinion that is literally probative of the misconduct. Those evidentiary babies of criminal wrongdoing or extrajudicial influence will be tossed out *ab initio* with their blue boodle bath water. And this is so even in face of a colleague like Kozinski who underscores that causal connection to his Circuit colleagues in his dissent. The problem in judicial misconduct cases is the erroneous conflation of 'Opinion' with 'Order.' Only orders are properly eliminated from Council review on ground of Appeal because the point of the Order is reversal thereof. It's accompanying Opinion is fair game. For in what

medium other than the judicial case administering can one expect to find misconduct manifesting? A judge can be reported to Council for ex parte conduct or for fractiousness from Bench. But the key question for any serious reviewing Council is whether such surly sordid shoddy conduct found its way into a pernicious adjudicating of the case. *That* key question can be answered only by reviewing the Opinion and determining if there is proper legal and factual basis present in record. But that is a truth-seeking trip upon which no Council wants to embark. Such will establish a bona fide misconduct record against colleague and *that* would violate the overarching principle of ABA membership: to violate nepotism is unforgivable sacrilege. "I'm just there to call the balls and strikes...." Surely one is not that easily amused by sports misanalogy. When the Circuits start holding their district courts accountable to excellence and integrity by keeping a public scorecard and weeding out the riffraff, as is done with NFL referees, only then will the integrity of the courts rise to the level maintained in professional sports.

7 Cheating is Always a Collaborative Effort Between Judge, Counsel

7.1 The judge is (supposed to be) present to ensure correct application of law and procedure. "The essence of the judicial function is to make...reasoned decisions *according to the law*." (*Judicial Conduct and Ethics* 3E (2000), Shaman, Lubert, Alfini; Page 40, emphasis added.) If a counsel perpetrates fraud upon a court in effort to steal advantage or to prejudice the case of his adversary, that judge can, *inter alia*, sanction him severely -- even disbar him on-the-spot. If follows, then, that if an attorney is cheating on Adversary and the judge is doing nothing to curb such conduct, then

one can properly infer extant partnership between that counsel and judge. No counsel can overtly defile the machinery of justice in a lawsuit in the absence of judicial consent or without his explicit participation. As observed above (¶22), a judge *will* follow law unless he is provided with incentive sufficient to cause him to veer from his default mode of neutrality, i.e., impartiality. Hence, from the fact that a judge is not delivering justice in strict accordance with the Rules or law or, moreover, is allowing one counsel to openly defile the tools of justice in prejudice to Adversary, one can draw proper legal inference to the existence of substantial illicit cause therefor that is causally *tied* extrajudicially between judge and counsel.

8 The Two Fundamental Reasons for Cheating in a Lawsuit

8.1 It is axiomatic that a party cheats in a lawsuit only when that party is guilty and wants to escape accountability under law for his crimes. There are two fundamental reasons for such "cheating" in a lawsuit. One for the attorney and one for the judge.

(a) First, since legal machinery is oriented to bringing forth truth, counsel for the guilty will attempt to adulterate these procedures through various bad faith tactics in order to prevent Adversary from being able to use that machinery to bring forth truth, i.e., evidence, against his client. His goal is to win at any cost to truth or to the integrity of the legal system. Thwarting evidence and Adversary's due process rights are two of the devices in his scam-bag. The purpose of the jurist is to put a stop to all prejudicial and Rule-violative conduct. And, if the judge does not do so, there is a portentous reason therefor.

(b) The second reason for cheating in a lawsuit (i.e., for defiling the machinery of justice) is more intricate

and will be discussed below (¶22). In nutshell preview: if everything in litigation is performed in accordance with law but the case outcome is then suddenly "thrown" by judge in favor of a party, then Adversary will have solid grounds for reversal of that decision on appeal and Briber will not receive from Bribee (that judge) his paid-for outcome. *Ergo*, judicial "cheating."

9 The Choreography of a Cheating Counsel

9.1 The perverting of legal machinery in service to illicit end cannot be done by counsel in a vacuum. The case record will always display evidence of bypass of proper procedure or fraudulent manipulations of the legal tools and procedures that counsel adulterated to serve his goal of thwarting truth and Adversary's rights. This "choreography" of deceitful agenda will travel visibly in the lawsuit and reveal itself in a manner that is not unlike the circumstantial evidence of a crime. This bona fide "trace evidence" of "legal procedure crime" will include such tactics as: the mischaracterizing of fact or misapplication of law, arguments with blatant fallacy, bad faith tactics or scams to thwart and prejudice Adversary's due process rights, falsification of fact in affidavit or presenting hearsay therein, etc. It follows that if cheating-type choreography in a lawsuit is always done for specific goal to defeat truth from emerging, then the presence of "trace evidence" of the same in the record will allow proper legal inference to the guilt and culpability of the party. That is, the presence of fraud, deceit, and defiling of the machinery of justice (just like the circumstantial evidence of blood, hair, fibers, DNA, etc, left at a crime scene) is itself evidentiary and probative of a party's guilt. For the same would not otherwise be present. Truth needs neither disguise nor defiling of the tools of justice.

10 The Evidence Proving Judiciary Partnership in Crime

10.1 The above reasoning leads one inexorably to the conclusion that anytime one finds in the records of a case, a deviation from mandated procedure or an outright defiling of the machinery of justice *by counsel*, then there is one and only one reason for that compelling "circumstantial evidence" of that *party's* guilt.[6] It is to intentionally prevent this venerable machinery from achieving its intended outcome because one is trying to prevent truth (and, thereby, accountability) from being brought forth into lawsuit evidence. Plaintiff's fictitious criminal "Gilrat" (c.f., ¶22 *supra*) wants the privileged status of being able to commit his crimes with impunity. He tries to achieve this by thwarting Adversary's civil right to the tools that are capable of exposing truth and entering such facts into case record.

10.2 The corollary of this logical principle is equally valid and as persuasive: Anytime that one finds that the pretrial judge is himself engaging in the perverting of the machinery of justice (e.g., misapplying or deviating from law, falsifying law by using law that is superseded, falsifying facts, creating fiction as fact, failing to enforce FRCP, failing to intervene to curtail

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[6] "There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner...chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be...inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" *Link v Wabash Railroad Co*, 370 US 626 (1962) quoting *Smith v Ayer*, 101 US 320 (1879).

and sanction bad faith scams that divest Adversary of due process rights, failing to justify his rulings with authority and cogent explanation, etc) or, alternatively, if one finds that the judge is simply allowing (i.e., supporting through his apparent nonintervention or, more accurately, his opaque intervention) the defiling of the machinery of justice by counsel, then there is and can be one and only one reason. That judge has abdicated (for extrajudicial cause) the judicial position as impartial trier of fact and has arrogated the role of partner in crime. If a judge is actively contributing to (or supporting through the scam tactic of opaque intervention) the conduct of a licensed officer of the court who is engaging in outright fraud upon his own court, then that judge *wants* (has a personal agenda) to prevent truth from being brought forth.

10.3 And, ceteris paribus, there can be one and only one reason why any judge would tamper sua sponte with due process and application of law or, alternatively, would allow counsel for one party to prejudice the due process and procedure rights of his adversary by defiling the esteemed machinery of justice in this way. That sole reason is that the judge has determined that the party being unduly prejudiced by the malfeasance of counsel (and *a fortiori* his own judicial malfeasance) *will*, in fact, lose the lawsuit. That judge is actively "setting up" that innocent party for a predetermined case outcome in favor of the justice-desecrating counsel. And the *only* condition where a judge would do this is that condition where there exists a hardy illicit extrajudicial relationship with that counsel. There is a *contractus criminis* for case outcome in place. That judge is himself "cheating" on the Rules and on the law solely to deliver on his end of the concordat. He is busy perverting the

Rules and adulterating the law and "misperceiving" the facts and "disregarding" certain evidence, in order to "justify" through sophistry the unlawful case outcome that he intends to deliver through sophist ploy crafted to dupe his Circuit colleagues. He does this because an *un*lawful case outcome cannot be derived from lawful procedural premises and he must protect his illicit outcome for Briber from overturn on Appeal. Hence, it follows with logical certitude that the judicial (i.e., the decisional administering of the case) is evidentiary both of noxious extrajudicial factor and of a corrupt Bench.

11 What is "Noxious Extrajudicial Factor" in a Lawsuit?

11.1 The extrajudicial includes anything that occurs with the judge outside the proceedings of the lawsuit that is suit-relevant. If a judge announces to the defendant that he will attend a conference on asbestos that is being paid for by the plaintiff, then this is an extrajudicial event. But it is not likely to be an instance of (what Plaintiff is calling) "noxious extrajudicial factor" because it was not secreted and because it was done by the judge for a worthy motive, viz., educational purposes in a very complex litigation. See *In re School Asbestos Litigation-Pfizer v Kelly*, 977 F2d 764 (3d.Cir 1992). The noxious extrajudicial, on the other hand, includes such things as: (i) an illicit ex parte relationship between judge and party that is secreted and rooted in bribery (or other personal incentive for the judge), (ii) a conspiratorial pact between the two against Adversary, and (iii) *mens rea* mind set. As has been demonstrated in each of my three extant motions on the 09/08/09 Opinion: my 10/19/09 Opposition and Cross-Motion; my 10/30/09 Disqualification Motion; and the within 10/29/09

Motion for Declaratory Judgment; the record of my case proves that all three conditions are met by Chesler -- and in spades.

12 Noxious Extrajudicial Invariably Begets Noxious Judicial a.k.a. The Choreography of a Cheating Bribed Judge

12.1 The purpose of a bribe is to net a judicial outcome, i.e., a judicial decision. That *is* its raison d'être. If a judge secretly engages in an extrajudicial ex parte concordat with a party for predetermined case outcome, it can have application only for the judicial. Anything else is incoherent. Consider the following. If a judge accepts a bribe (a clearly noxious extrajudicial commodity) to throw a case (i.e., to deliver predetermined outcome) but then takes great care to ensure that everything proceeds in accordance with the letter of the law (including but not limited to case outcome), then that extrajudicial bribe is a legal nullity in the suit. It was nullified by Bribee himself by his own honorable body of decision-making conduct. If a noxious extrajudicial component actually obtains regarding a given lawsuit but does not also manifest therein in judicial media and also noxiously, then that component does not qualify as noxious extrajudicial factor. It is a legal nullity. If a party bribes a judge ex parte for predetermined case outcome, the sole place that the said extrajudicial bribe can manifest itself is in judicial media: i.e., the body of adjudicative judicial decision-making that results from motions, applications, briefs, facts, and arguments, discovery rulings and conduct, the hearings, etc. And if a party cannot secure a win within the Rules because he is guilty of the averments of the complaint, and if he intends to escape accountability for his crimes, then the key place to look for evidence of noxious

extrajudicial factor is in the history of the decisional administering of the lawsuit by judge. That is: in his entire record of judicial decision-making over the duration of the case -- from first application to ultimate outcome. Hence, it follows with logical certitude that if one wants to prove the existence of noxious extrajudicial factor in a lawsuit, one should *not* go looking for a videotape of "Gilrat" passing boodle bag to (fictitious) "Judge Chesrat" behind the dumpster of their favorite wappen-bappen. That alone would not be probative of an extrajudicial factor in the lawsuit -- for it could wind up as a legal nullity. Rather, look carefully at the record of judicial decisions by "Chesrat." If "Gilrat" has advanced consideration for predetermined case outcome, then that noxious extrajudicial commodity cannot but be manifested (not merely in case outcome but also) in the judicial decision-making conduct of "Chesrat" vis à vis his favored counsel. And *that* body of judicial decision-making (including his opaquely interventional conduct) will also be noxious (unwarranted under facts and law). For when a judge is acting criminally to deliver an unlawful case outcome pursuant to extrajudicial boodle and concordat, then invariably: (a) he will (and must) try to protect that paid-for outcome from reversal on appeal by lots of judicially noxious tactics and decisions along the way (otherwise the bribe will be rendered moot); and (b) he will try to prevent truth from being placed into the hands of "Gilrat's" adversary by thwarting that party's civil rights and by himself defiling the machinery of justice. And this is why cheating in a lawsuit is *always* a cooperative partnership between judge and bribing counsel.

13 Proof of Bribed Judge: Noxious Extrajudicial *Must* Manifest as Noxious Judicial

13.1 As pointed out above (c.f., ¶22), there are two fundamental reasons for cheating in a lawsuit. One for the attorney and one for the judge. From the perspective of counsel, the attorney cheats because his client is guilty and he wants to obstruct his adversary's right to evidence that will prove it. So he defiles legal machinery in order to obtain (unlawful) advantage that would otherwise *not* be achievable under the auspices of both properly functioning legal machinery and impartial trier of fact.

13.2 From the perspective of the judge, the explanation of why he cheats is more intricate. As mentioned above, if everything in litigation is performed in strict compliance with law but the case outcome is then suddenly "thrown" by judge in favor of a party pursuant to extrajudicial deal, then Adversary will have very solid grounds for reversal of that decision on appeal. For the said outcome is flagrantly inconsistent with the case history and evidence -- both logically and legally. If the case gets reversed on appeal, then Briber will not get his paid-for outcome. He will have advanced consideration for no benefit received. This situation legally entails: (1) If there exists noxious extrajudicial deal for predetermined case outcome, then noxious extrajudicial factor cannot but manifest itself in the lawsuit (otherwise it would defeat the purpose of the bribe). (2) The predetermined case outcome to be rendered in exchange for bribe literally *cannot* itself be legally inconsistent with the record. Hence, the record must be carefully crafted by judicial (mis)administering with goal to dupe Appellate brethren.

13.3 Since Briber party and Bribee judge are engaged

in *contractus criminis*, the sole way that the judge can deliver on that concordat and protect that contracted outcome from reversal is to adulterate and defile the administering of justice along the way to case outcome. A trial can be thought of as the equivalent of a one long argument where witnesses and evidence get entered into the deliberation process as does a premise on a line in a logical (or mathematical) proof. The conclusion is derived through the *laws* (not "rules") of logic. This entails that only those premises that get entered on a line can be used in deriving the conclusion, i.e., the case outcome. In divesting Adversary of due process, one blocks evidence. In blocking evidence, one blocks a premise from becoming entered on a line which cannot, then, be considered in deriving the outcome decision by district judge (or by appellate judges). The same idea applies to the pretrial portion of the case. However, the goal here of the attorney for the guilty is to get the case unjustly dismissed in advance of discovery. If a judge, acting pursuant to extrajudicial concordat, intends to deliver a predetermined case outcome, then the one thing that he cannot do is to establish a record in the case history that is the equivalent of premises that are themselves in accordance with law. For on *that* condition, a lawful conclusion (case outcome) will be established. And if the judge does not deliver that lawful conclusion (which, by assumption he cannot do because he is acting pursuant to ex parte "deal"), then he will be flatly reversed on appeal and there will have been no purpose to the bribe. Further, even if Chesler has two corrupt Circuit judges on speed dial, in the same way that Gilroy had Chesler on payroll, the mere fact that Opinions are public records entails that the traces of civil rights crime must be smoke screened by smoke and mirrors sophistry. The reason why the bribed

judge can get away with this is because, if he hides his crime well by carefully crafted sophistry, then his appellate brothers (even if honorable) will enforce his Opinion based on the nepotistic principle of deference. That is, they will affirm upon irrationality in the Opinion (i.e., even when convinced it was incorrect decision) and reverse only in the most extremely irrational of Opinion.

13.4 It follows that the sole way that a bribed judge can both deliver a predetermined case outcome *and* protect the purchased outcome from reversal is to carefully craft the premises from which the conclusion (outcome decision) will be derived (both by him and appellate judges). If conclusions are derived from premises and an unlawful conclusion cannot be derived from lawful premises, then the sole way that Bribee (the judge) can deliver unlawful case outcome to Briber is through the establishing of unlawful premises. The only way to achieve this is: the jurist himself must pervert Rules, law, procedure, facts, and insert fiction into the record. He must create lots of logically and legally defective premises (smoke and mirror tricks) in order to "justify" (smokescreen) his delivering of unlawful outcome and to protect the fraudulent spoils from reversal. He must engage in arrant sophistry. He must (mis)use his "discretion" to pervert and transmute law into "garbage law." The judge has to create "wins" for Briber in motions along the way (premises) that are not justified under law in order to establish a case record that will bolster the unlawful case outcome. All of these "smoke and mirror" judicial tricks leave "trace evidence" in the history of the case. They are all judicial decisions. *Ergo*, it is axiomatic that noxious extrajudicial factor in a lawsuit invariably begets noxious judicial decision-making and from noxious judicial decision-making one

can legally infer the existence of bribed judge.

14 The Circumstantial "DNA" Evidence Proving Biased or Bribed Judge

14.1 The job post of judge is to be an objective fact finder and a truth seeker when dealing with every case brought before him. Ironically, when a case of misconduct by colleague is brought before Judicial Council judges, this focus and all of this training simply evaporate. Truth seeking is out. The rules of evidence are nowhere to be found. Accountability is ruled out by very definition of purpose. And the judicial decision-making conduct is excluded from consideration from the get-go. However, as proven above, there is no place other than the judicial that the noxious extrajudicial can manifest.[7] Where do you want to look for it? Behind the wappen-bappen? Plaintiff has already proven (§IV ¶22) that a sound enhanced videotape of "Gilrat" and "Chesrat" entering into *contractus criminis* for predetermined case outcome with clear and indisputable passing of boodle therefor is not legally sufficient for establishing bribed judge (just as a videotape of OJ Simpson telling someone that he intends to murder Nicole is not simpliciter sufficient for proving that he did, in fact, commit the double homicide). The sine qua non for

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[7] Note the tacit inconsistency in Judicial Council's excluding the judicial from consideration in Manuel Real's misconduct case and the Erza and Winmill dissents, which acknowledge that there is something very wrong in the judicial conduct of Manuel. Kozinski was able to prove Manuel's wrongdoing by attacking the judicial. He intuitively knows that the extrajudicial is manifesting in the judicial. Kozinski was the only judge to realize that the extrajudicial leaves traces in the judicial and that the judicial is evidentiary and probative of the extrajudicial. (See *In re Complaint of Judicial Misconduct*, *op.cit.*)

proving bribed judge is what "Chesrat" does *subsequent to* that concordat in the judicial media of the case. A videotape of bribe passing is equally unnecessary to proving the existence of bribed judge as a videotape of OJ Simpson committing the double homicide of Ron and Nicole is unnecessary to proving his guilt of those murders. In both instances (bribe and murder), the circumstantial evidence of the crime conclusively establishes correct legal conclusion. And this is why Opinions cannot be excluded from misconduct reviews. To do so is to exclude *ab initio* the equivalent of circumstantial evidence of crime. It is to exclude DNA results from evidence.

14.2 Sophistry is both the sword and shield used by corrupt judges to deliver predetermined case outcome. This is because it is allowed by our nepotistic legal system to pass as "discretionary," a conceptually ill-defined concept, in deference to "judicial independence," a concept that presently occupies the border between vacuity and incoherence. If there exists noxious extrajudicial factor at work in a lawsuit, then that bribe will beget noxious judicial administering of the case. Although the judge is a legal expert and know exactly how to adjudicate matters correctly according to law, he will nonetheless commit "elementary" "mistakes" in service to the noxious extrajudicial deal. These calculated instances of sophistry crafted to smokescreen bribed outcome will then be brushed off the table by the appellate judges as "abuses of discretion" or "plain error" when they are neither. When a judge is delivering predetermined case outcome, he has a very clear methodology. He will rely on extrinsic factors instead of on the plain meaning of a statute, he will violate procedure and precedent, he will disregard mitigating evidence, he will prefer an extraneous perfunctory

report and show slight to a body of well established expert records, he will fail to offer any explanation of his rulings, he will fail to cite any authority that supports his judicial determinations, he will assert fiction as fact, he will apply a legally incorrect standard in admitting or in excluding evidence, he will apply the wrong body of law to a matter, he will disregard the tense in a statute (which controls its application) or its plain meaning. And to get away with his crime, that judge will smokescreen his crime by "justifying" his paid-for outcome with such calculated inanity as, "Gee, the fact that the statute is written in the present tense or in plain language just does not seem particularly significant to me"; or "My reason, counsel, for that decision is because I said so." In short, he will "pretend" that intentionally law-violative decisions fall under the rubric of bona fide judicial discretion when he knows that they are calculated sophistry to give credence to the fraudulent case outcome in order to protect that unlawful outcome from overturn on Appeal. For "discretion" and "immunity" are the "currency" that allow him to get away with using the people's office as a platform -- as a sword and shield platform -- for conducting with impunity his independent contractor side-business for personal gain.

> "When a judge acts in accordance with the rules of procedure, when he gives reasons for his orders, when he allows both sides equal and open access to him, when he follows the law, he ensures not merely that justice is done, but that it appears to have been done. When, on the other hand, a Federal judge exercises the vast powers entrusted to him by Congress based on secret communications with one party, when he fails to give the opposing

side an opportunity to speak, when he refuses to give reasons for his actions, when he does not cite legal authority, when he stubbornly and laconically sticks to his guns despite repeated requests for reconsideration or an explanation, he inevitably gives rise to the suspicion that he acted for personal and improper reasons rather than according to the rule of law." Judge Kozinski, *In re Complaint of Judicial Misconduct*, 425 F3d 1179 (9th Cir.2005).

§V. PROOF: CHESLER'S WELL-ENTRENCHED PATTERN OF SOPHISTRY

15. Reversed Six Time So Far This Year For Irresponsible Decision-Making

15.1 02/02/09; *Robinson v Napolitano*, 554 F3d 358 ("The District Court believed that the fact that 'the statute is written in the present tense in not particularly significant,' Robinson, 2007 WL 1412284 at *4, but we disagree. The use of the present tense in 8 USC §1154(b)...makes plain that the fact in the petition -- including the alien's spousal status -- must be true at the time USCIS decides the petition.[] For the reasons set forth, we will reverse... the District Court....")

15.2 04/16/09; *U.S.A. v Olhovsky*, 562 F3d 530 ("Six year sentence... was unreasonable, where court's explanation that it could not predict likelihood of recidivism was of little assistance, court's statement that prior trreatment efforts had failed was incorrect [i.e., Chesler falsified fact], court omitted any consideration of defendant's submormal social development, and court did not offer any explanation for accepting government's three-page expert report and ignoring substantial evidence derived from

contrary expert opinions of psychologists who actually interviewed defendant, or opinion of his treating psychologist.[] [I]t is not severe punishment that promotes respect for the law; rather, it is appropriate punishment...A sentencing court has a duty to evaluate the quality of mitigating evidence presented to it.[] As we have emphasized, the "overarching principle" of parsimony that Congress included in §3553 directs the courts to impose a sentence "sufficient, but not greater than necessary, to comply with the purposes set forth in [that section]." A district court has a duty, to evaluate the quality of mitigating evidence presented to it. Yet, here, the district court [Chesler] concluded that "draconian" punishment was warranted with only minimal consideration of substantial evidence to the contrary. The Supreme Court has recently stated: The appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances.... In the [sentencing] context, a statement of reasons is important. The sentencing judge should set forth enough to satisfy the appellate court that he has condsidered the parties' arguments and has a reasoned basis for exercising his own legal decision-making authority.... Where the defendant or prosecutor present nonfrivolous reasons for imposing a different sentence, however, the judge will normally go further and explain why he has rejected those arguments. [cite omitted] There was clearly nothing frivolous about defense counsel's argument that Olhovsky was not a typical offender nor counsel's suggestion that his crime did not fall within the minerun of cases the Guidelines are intended to address. The court [Chesler] responded by stating: "[t]he guidelines[] have been issued [] for a reason..."; and that strongly suggests that the court did not give

adequate consideration to the extent to which Olhovsky fit within the "heartland" of offenders [] As we have explained, that is but one example of the procedural errors committed by the district court."

15.3 05/28/09; *Kamienski v Hendricks*, WL 1477235 ("The sole question certified to us on appeal from the order denying habeas relief is whether the evidence was sufficient to prove Kamienski guilty of first degree murder and felony murder beyond a reasonable doubt. Based upon our careful review of the record, and despite the very deferential standard that limits our inquiry, we believe that no reasonable juror could conclude that the evidence admitted against Kamienski at his trial established that he was gulty of murder or felony murder beyond a reasonable doubt, and the New Jersey court's conclusion to the contrary is an unreasonable application of clearly established Supreme Court precedent. Accordingly, ...we hold that the district court erred in denying Kamienski's petition....")

15.4 06/19/09; *Hagan v Rogers*, 570 F3d 146 ("Essentially, the District Court relied on arguments that prisoners should not be considered "persons" permitted to join under Rule 20. We do not agree. 'The Supreme Court and this Court have repeatedly held that the Federal Rules of Civil Procedure, like any other statute, should be given their plain meaning.' Berckeley Inv. Group Ltd v Colkitt, 259 F3d 135, 142 n.7 (3dCir.2001). The Court's 'inquiry is complete if we find the text of the Rule to be clear and unambiguous.' *Id.* Rule 20's use of the term "persons" is clear and unambiguous. Nothing in the Rule itself raises any hint that prisoners should not be included within the broad definition of persons capable of joining their claim pursuant to the Rule. Thus, the

District Court's reliance on... extrinsic considerations rather than the plain language of Rule 20 was error.[] The District Court's reasoning is problematic....[] The District Court failed to articulate why....[] We likewise find it premature for the District Court to conclude that....[] For these reasons, we conclude that the District Court abused its discretion...[] The District Court's order denying joinder to the Appellants was based on an erroneous conclusion of law and will be reversed. The District Court also abused its discretion in concluding that Appellants could not proceed as a class, and the order denying class certification will be vacated.")

15.5 07/30/09; *Thomas & Betts Corp v Richards Manufacturing Co*, WL 2329916 ("Because we conclude that the District Court [Chesler] (1) applied an incorrect body of New Jersey law in evaluating T&B's misappropriation claim, and (2) applied too restrictive a standard in evaluating the admissibility of T&B's experts, we will vacate the order of Final Judgment and remand for further proceedings.")

15.6 08/12/09; *Diaz v Commissioner of Social Security*, WL 2449513 (Chesler affirmed an ALJ's denial of application for a period of disability insurance benefits. Third Circuit reversed Chesler on grounds that ALJ erred "by failing to explain [his] decision to dismiss the diagnosis of a state agency physician, who noted severe arthritic changes and limited range of motion in claimant's knees, in favor of the opinions of...physicians who, after brief exams, issued fairly perfunctory reports regarding claimant's arthritis [and where the] state agency physician's diagnosis was supported by probative evidence in the record.")

16 Just Look at What Chesler Has Done in My Case

16.1 See My 10/29/09 Disqualification Motion.
16.2 See My 10/19/09 Opposition with Cross-Motion.

§VI. SUMMARY

The following are axiomatic. Noxious extrajudicial begets noxious judicial. The existence of noxious judicial factor in the judicial administering of a case is evidentiary of a failure in judicial impartiality and is probative of noxious extrajudicial factor at work in the media of the lawsuit. This may be impermissible bias at one end of the spectrum. But when there is substantial deviation from fact and law, then that judicial Opinion is probative of the judge having accepted bribe to deliver predetermined case outcome. Truth needs neither disguise nor the defiling of the machinery of justice; hence, when the latter is present in a lawsuit, there is one and only one reason therefor: viz., *contractus criminis*. The counsel who is employing techniques to defeat his adversary's rights to due process or to lawful application of FRCP or discovery rule has a client who is trying to prevent truth from being brought forth in the temple of justice. A judge who allows any party or his counsel to do this, or who is actively involved in creating the same, is not an impartial trier of fact. Rather, that judge is that malefactor's partner in crime. There exists *contractus criminis* for case outcome, the people's courthouse is *locus criminis*, and that public servant's chambers is *locus delicti*.

Why are district court judges not doing their jobs with integrity and professionalism? Why do they constantly have to be supervised and corrected and have their decisional infelicities cleaned up, like roadside litter that never should have occurred in the first

place, by an "appellate mother janitor"? And further, why does this "appellate mother" seem to have infinite patience for cleaning up the same inexcusable mistakes over and over and over again from the *same* district court judge when each and every said reversable mistake is costing an innocent party hardship and tens of thousands of dollars in losses for an appeal that would not have needed to be filed had the district court performed *his* job competently? And even then it gets remanded back to the same man who could not do it right first time around. Further, what is to be said about all of the cases that do not find their way to Appeal solely due to costs and the fact that the case will only get remanded back to the same judicial malefactor? A determination of "plain error" or "abuse of discretion" literally entails that the district court judge did not do his job correctly. So why, then, is he still occupying that job post? The public has a right to have a cogent explanation. At what point do judges of the Third Circuit take control on behalf of the public and cease viewing these "errors" as benign "lapses in judgment" and categorize them properly as what they are: namely, the jetsam and flotsam evidence of a corrupt judge having thrown a case for personal gain? Substantial deviation from law or from the facts of the case or from due process and procedure is proof of the judge's subjective bad faith and of his usurpation of the government's power.

§VII. REQUESTED RELIEF. WHEREFOR Plaintiff requests the following declaratory judgments:.

1. That the presence of noxious judicial in an Opinion is evidentiary and probative of the extrajudicial. That is, in the same way that one can make valid legal

inference from crime scene circumstantial evidence to the identity of the killer, one can make valid legal inference from noxious circumstantial evidence in an Opinion to the presence of noxious extrajudicial influence on that judge; i.e., the presence of fraud, deceit, and defiling of the machinery of justice (just like the circumstantial evidence in a criminal case, the blood, hair, fibers, DNA, etc, left at a crime scene) is itself evidentiary and probative of a party's guilt.

2. That Opinions that show substantial deviation from fact or law in their content (i.e., that bear no rational relationship to case evidentiary data or to controlling authority and, as such, are properly categorized as "the noxious judicial") are thereby evidentiary and probative of the presence of noxious extrajudicial factor having motivated the factfinder, i.e., the manner in which that Opinion was given its genesis. And, *ergo*, that the noxious judicial (i.e., judicial sophistry) is evidentiary and probative of the noxious extrajudicial viz., impermissible bias or bribe.

3. That when the Circuit discovers noxious judicial in an Opinion and reverses its Order, then the Circuit: (i) will make a specific finding documenting the presence of noxious judicial, and (ii) will rule that the issuing district judge is thereby *ipso facto* disqualified from continuing to preside on that case. Remand will be made to a different judge.

4. That every act of judicial administering of a case (rulings) are to be produced in a written decision that states the findings of fact and conclusions of law that factored into and led to that ruling. And if a court simply rules in absence of legal justification therefor, then that ruling or Order is thereby void *per se* as a

matter of law and the case will be remanded to a different judge.

5. That the Circuit will maintain a record of the reversals of a given judge on ground of judicial sophistry. Each of my three motions discusses different legal aspects of one problem: viz., a corrupt bribed judge in the people's legal system.

6. That the judicial administering of a case (the decisions) holds the equivalent of "DNA evidence" proving bribed judge.

7. The fact that the content of any Opinion is evidentiary and probative of the manner (whether lawful or unlawful) in which that Opinion was given its genesis. That is, Plaintiff seeks a ruling that every Opinion is evidentiary *per se*, that it contains bona fide circumstantial evidence of the (lawful or unlawful) motives and intentions of its factfinding author in arriving at his Opinion.

28 USC §1746 CERTIFICATION

The undersigned certifies pursuant to 28 USC §1746 and under penalty of perjury that the foregoing is true and correct.

Executed on 10/29/09. Elaine Karas, Plaintiff *pro se*